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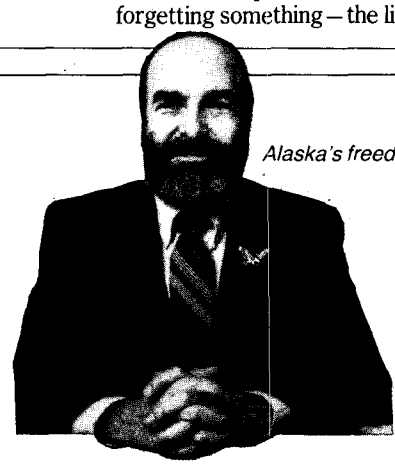

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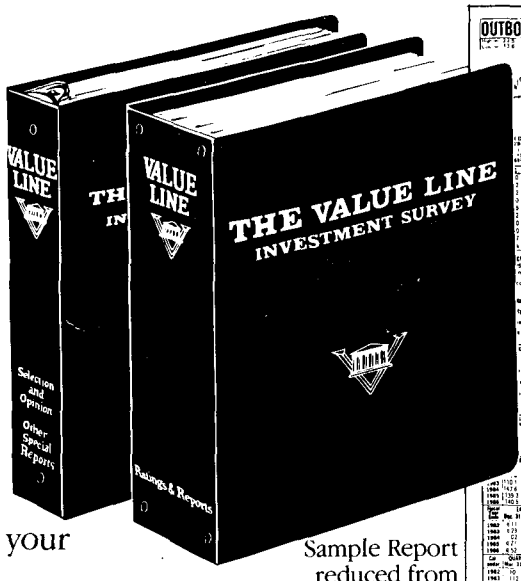

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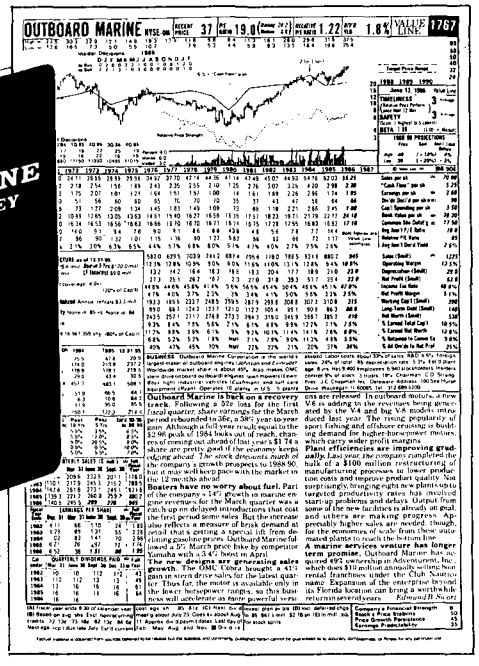

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up front

Publishing the Computer Way

Throughout its existence, this magazine has been something of a cheerleader for technology. In defending and celebrating the power of reason, we've done our share of marveling at its many new-fangled fruits. Recently we had the opportunity to put our money where our mouths are, so to speak, and boldly venture into the exciting—and often bewildering—world of computerized publishing.

Last year, we took the first step by computerizing the editorial department, setting up the editors with their own PCs (a move initially not welcomed by all parties concerned, but the seductive power of the PC has won us all over). Now, nearly all of our manuscript editing and in-house writing is done on the little purring machines, and we actually find ourselves talking about things like modems and floppies and disk drives.

With this issue, we intrepidly plunge head-on into the new technology. Nearly all of the editorial pages in the magazine before you were "composed" on our trusty PCs, using an amazing and powerful piece of software called Superpage. Created by the Pennsylvania-based company Bestinfo, Superpage enables a PC to instruct a typesetting device to generate a whole page—text, rules, captions, headlines, page numbers—everything but photos and illustrations (though, with the appropriate devices—still out of our financial range—that's even possible).

Sitting at our computers, we can edit an article, design a page on screen, fill it with the edited copy, and zap it by phone to our computer composition company. Within minutes, a bunch of electronic signals are converted into a whole page that can be sent off to our printer as is.

By contrast, in our days B.C. (before computerization), we would edit paper manuscripts (what we call "hard copy"), marking them up with various instructions for our human typesetter. Several days later we'd get strips of "galley type" back, which would then be cut up and pasted down onto boards—along with separate captions, headlines, and rules, all to be aligned by eye and hand. It was a highly labor-intensive, time-consuming, and expensive process.

So we're happy, right? Sitting easy with all kinds of extra time and money on our hands, right? Well...wonderful though the technology may be, it's not without its problems, quirks, and impenetrable mysteries. One lesson we've learned from this adventure (aside from being again reminded of those two great eternal truths—that reality never goes according to expectations and that if something can go wrong it will) is how difficult learning a new technology can be, particularly one that is young and relatively untested.

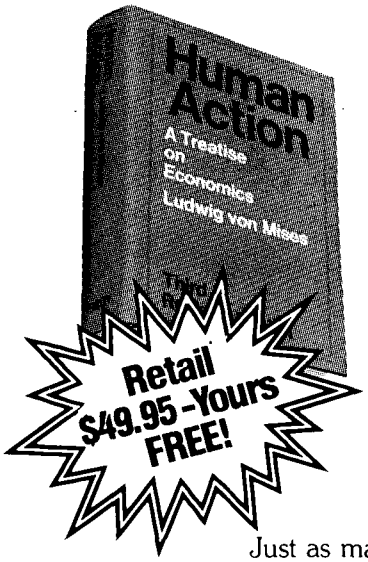
But if the system eventually performs according to expectation (or at least close to it), our savings would outstrip the cost of the software in less than a year's time—a good investment, we'd say. And thus far, we like what we see—and we hope you do, as well.

Regular readers will notice that this issue has a somewhat different look to it, incorporating some subtle design changes. (Curious observers should compare this issue with our August-September number to see the changes.) Doubtless, a few more slight changes in the magazine's graphic appearance are yet to come, as we continue to adjust to our new way of doing things. Let us know what you think.

Managing the whole computerized production process from start to finish will be our new full-time production manager, Nanette Campbell. With nearly 10 years of experience in various areas of print production, Nan's eager to take on the new technology and wrestle with those formidable keyboards.

In addition to her many other responsibilities, Nan will be taking over from me many of the functions I've performed as managing editor over the past several years, as I delete myself from the magazine's masthead to pursue other interests. May she, and the rest of the gang new and old, have as much fun on the magazine as I've had.

—Eric Marti



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letters

Thais: Armed with Self-Respect

Maurice Tanner's timely and accurate feature on Thailand ("Welcome to the Domino That Didn't Fall," July) struck a responsive chord. For the last five years I have worked with American companies setting up joint ventures in Thailand and the Philippines. The contrast between the two is striking. Filipinos are conditioned to look for government solutions to problems and to blame the government when their expectations are not met. Thais, by contrast, have a lot less to work with but have come much farther by believing they can prosper by their own ambitions.

All over the world the examples are in place. European interventionists will have trouble ignoring countries like Thailand.

Larry Grupp
Moscow, ID

Buckley on Drugs

In his review (July) of William F. Buckley's book *Right Reason*, Bill Kauffman writes that, insofar as drug use is concerned, Buckley's commitment to personal liberty extends no further than his belief that heroin should be made available to terminally ill cancer patients.

But this book is apparently not a reliable guide to Buckley's views on the subject. In the summer of 1985, perhaps too late for inclusion in *Right Reason*, he wrote in his syndicated column that eliminating street drugs is impossible in a democratic society and that "therefore we are probably better off licensing the drugs and mounting huge campaigns against their use." More recently, in *National Review* he described the decriminalization of drugs as "the only sensible course for America."

There are, of course, plenty of areas in which Buckley's views are still hostile to personal liberty, and he sees the decriminalization of drugs as a necessary evil rather than a positive good. But his commitment to freedom is nevertheless a bit stronger than Kauffman's review suggests.

Charles D. Poe
Houston, TX

What Does Means Really Mean?

I enjoyed the interview (Aug.-Sept.) with Russell Means. But I wish that your interviewer had pinned Means down and either made him answer or say that he would not answer certain questions. For example: "Would you be satisfied with governments at all levels deregulating Indian affairs, abandoning existing distinctions, and treating Indians like any other US citizens?" Means parried the question by saying Indians are forced to be US citizens. Most Indians today received US citizenship the same way most non-Indians received it—by being born in the United States.

I would like to know if Means wants no special treatment or better special treatment for Indians.

John G. Tietz
Hamilton, MT

The State Against Indians

Much can be learned from the words of Russell Means, even though some of his tactics may seem distasteful or ill-advised. His courage in speaking out against the Sandinista genocide of his Indian brothers in Nicaragua merits our respect, since it has made him a pariah to the American left.

At the beginning of the Reagan administration I had the responsibility for attempting to coordinate Indian policy in the White House. Despite Reagan's very sincere concern about Indians, his administration was no more able than its predecessors to address

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letters

the Indian question meaningfully. The sense of utter futility and tragedy that this experience gave me was a significant part of my decision to depart the staff in 1982.

Of particular interest to me was Means's observation, quoting Vine DeLoria, Jr., that "until the U.S. learns to treat its Indian people with justice and fairness, its foreign policy will always be a failure." I once tried to make this same point to a high State Department official concerned about the Marxist regime in Nicaragua. My remark, alas, was met with complete bewilderment.

Worse, my suggestion that we appoint America's most respected Indian elder as the US representative on the UN Human Rights Commission, with no instructions but to speak plainly about justice for the oppressed nations throughout the world, was greeted in Foggy Bottom as evidence of advanced insanity on my part.

I remain convinced that America's policy toward what Lenin called the "national self-determination question" is the key to a strategy for undermining the communist empire and advancing the cause of peace and justice in the world. In addressing this question our own Indians are an invaluable source of wisdom. It is time for them to speak, and us to listen.

John McClaughry
Concord, VT

Repression: All in the Mind?

As a three-year resident of New Hampshire, I was especially interested in Tibor Machan's article on Swiss local government. ("Hey Greta, Why So Morose?" July).

For whatever reasons, the fact that the Swiss are morose is not mirrored here. Yankees do have considerable reserve, but their good will is not far below the surface. What *is* common between New England and Switzerland is local politicization. Town meetings are often as repressive as anything Machan describes.

Yet this isn't necessarily an indictment of local participatory government. I lived in rural Appalachian communities for years and found little of the repression of pure democracy. I think this is due to the political beliefs of the local people. For 300 years, New Englanders have been taught that it is their *right* and *duty* to govern. In Appalachia, the people are indifferent and even hostile to controlling others.

Decentralists and secessionists preach the virtues of smaller units of government. They might be right. But Switzerland and New England demonstrate that it is the attitude of people toward government, not the size of their government, that really makes the difference.

Paul Bilzi
Contoocook, NH

Exploitation by Any Other Name...

Though Christie Hefner denies that *Playboy* exploits women (Interview, June), she herself comes very close to explaining what is morally objectionable about the magazine. Hefner says that "women are sensitive to *Playboy*...in part because as a culture we're surrounded by images of women that are sexual and there's almost a complete absence of images of men that are sexual." In our culture there is a strong link between sex and harm to women: women (not men) are frequently raped, abused, harassed, and generally treated with less than full respect because of their gender and sexuality. When you combine the sexual image of women with the strong link between sex and harm to women, it's hard to avoid concluding that anything that substantially contributes to viewing women as purely sexual beings harms women. Whether it is appropriate to call this exploitation is not so important as the fact that *Playboy* (and most pornography) helps to promote the role of women as sex objects. That is a role which is harmful to women.

Danny Shapiro
Rice University
Houston, TX

Sexism, Thy Name is Bill

Bill Kauffman's writing ("Up Front," July) would be a helluva sight prettier if he left out the sexist comments. First he refers to the woman on the cover, Pom, as "a helluva sight prettier than Mack Tanner." Then he tosses in another sexist comment when he says about her, "Nirvana, thy name is Pom..." This male version of Nirvana has nothing to do with the story on Thailand and is an insulting comment for people trying to get beyond stereotypes.

Now, Bill, please don't get overly emotional about this criticism. I would hate to see you worry your pretty little head about it too much or, heaven forbid, burst into tears.

Paula Brookmire
Milwaukee, WI

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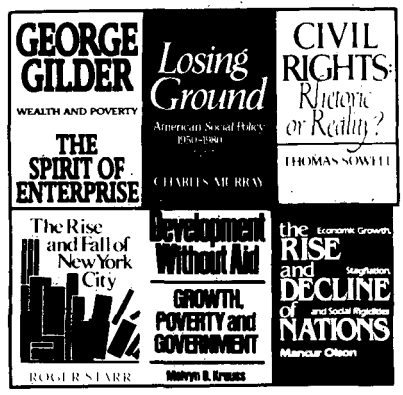

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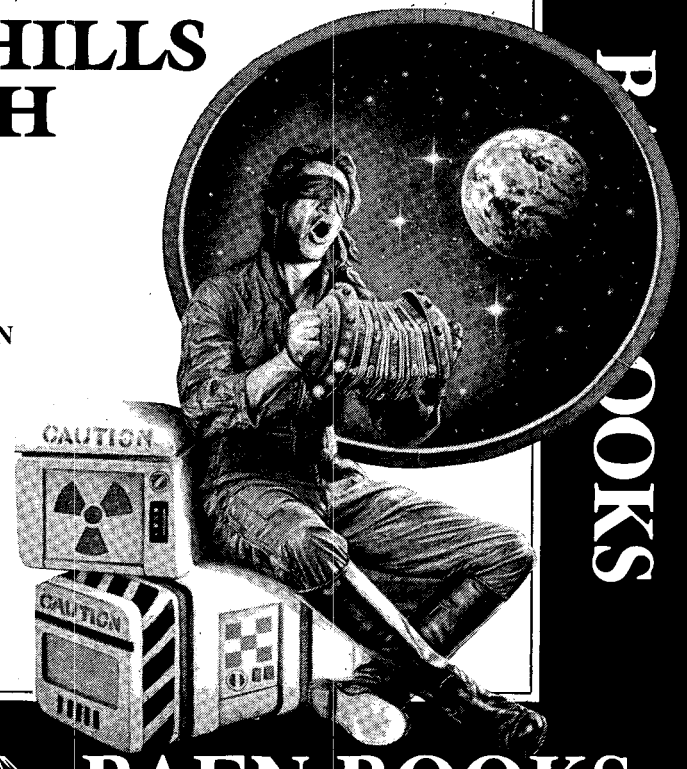

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Who Killed The Challenger 7?

Robert W. Poole, Jr.

A mountain was in labor, sending forth dreadful groans, and there was in the region the highest expectation. After all, it brought forth a mouse.

—Phaedrus, Fable 22, I

The president's space shuttle commission labored for nearly five months...and brought forth a mouse. With great moral fervor it zeroed in on the immediate cause of the *Challenger* explosion—a badly designed joint on the solid rocket booster. But it utterly failed to investigate the underlying cause of the tragedy. That cause is politics. Not the politics behind the decision to launch on January 28, 1986, but pervasive politicization of the entire shuttle program.

Consider some of the results: The shuttle did not have to be designed with solid rocket boosters; no man-rated booster had *ever* before used solid-fuel rockets rather than much more controllable liquid-fuel rockets. And only one other solid rocket booster had ever been built in segments stacked atop one another, requiring troublesome joints, rather than being cast as a single unit.

And *no* other manned launch system —even Soviet ones—had ever launched human crew members without any emergency escape system, leaving them helpless victims of any malfunctions. That all of these flaws were incorporated in a single vehicle is...well, "criminally irresponsible" is probably not far wrong.

Incredibly, the Rogers Commission avoided these issues, narrowing its focus to the minutiae of the joint design and the fateful launch decision. Even there it found evidence of a politicized decision process. NASA bureaucrats wanted almost desperately to launch the *Challenger* before the president's State of the Union address, so that he could read some NASA-drafted PR lines about a teacher in space. And Morton-Thiokol executives overruled their engineers out of fear of displeasing their NASA masters.

These obvious manifestations of politics driving the program should have tipped off the commissioners to more fundamental problems. But they did not.

The truth is that the history of the space shuttle is a history of a program created and driven by overriding political considerations. After the windup of the Apollo program in 1969, NASA needed another major program to "keep the team together." When it could not muster congressional support for its proposed next stage—a space station and a cheap "space truck" to supply it—the space agency went back to the drawing board.

All the major space constituencies had to be bought off. What emerged was a spacecraft with something for everyone: laboratory facilities to win over the scientists, a huge cargo bay and extensive reentry maneuverability to woo a reluctant Air Force, and a flight schedule like an airline's to seduce the space skeptics in Congress.

Having made these unkeepable promises to combine multiple features in one impossible vehicle, NASA then exerted relentless, brute-force pressure on the design. To hold down annual development costs, the agency abandoned its early plan to have both first and second stages be fully reusable (which would have saved money eventually in operating costs). But instead of using a throwaway liquid-fuel booster stage (as proposed by Lockheed), NASA's then-administrator James Fletcher chose the riskier option of reusable solid-fuel boosters.

Still, even with that unprecedented choice, NASA *could* have produced a safer design. But instead of a one-piece solid rocket proposed by Aerojet, Fletcher opted for the stacked-segments design by Morton-Thiokol. Although it was ranked least desirable technically out of four proposals, it had the lowest price tag—*and* the Thiokol plant is located in Brigham City, Utah. Fletcher, it turns out, is an ex-president of the University of Utah, his wife is from Brigham City, and Sen. Frank Moss (D-Utah) was chairman of the Senate committee that controlled NASA's pursestrings. Moss's top aide at the time has stated that there is no question that Thiokol got the job because of Moss.

Even with the segmented solid rocket boosters, the astronauts might still be alive today, had NASA not rejected what is known as "abort modes." And why did it? Politics again.

In McDonnell Douglas's 1972 shuttle design proposal, detailed modes of escape and recovery were provided for every portion of the launch. (You can see the charts and diagrams from this proposal reproduced in the February 1986 issue of Tom Brosz's excellent newsletter, *Commercial Space Report*.) Other contractors also proposed abort modes. But NASA eliminated them from the shuttle's final design to achieve a *two percent* weight saving and $270 million in cost savings over the life of the program. Because its design was so complex, the shuttle was badly overweight and chronically overbudget. So to keep the numbers within reach of what it had promised Congress, NASA simply axed the safety systems.

But it wasn't the space commission that uncovered these damning facts. It was a reporter for the *San Jose Mercury News*. For all the careful work the commission did on the immediate causes of the *Challenger* explosion, it never dug this deep. No fingers were pointed at the politicians and bureaucrats who overrode engineers' judgments more than a decade ago, thereby consigning seven astronauts to a fiery death.

Where do we go from here? As this issue goes to press, NASA administrator James Fletcher (yes—he's back!) is lobbying hard for construction of a replacement shuttle orbiter, at about $2.5 billion. President Reagan must decide whether to allow NASA to thus resume its role as the nation's quasi-monopoly space transporter or to

restrict the remaining three shuttles to research and selected military missions. In either case, major design changes are essential before any shuttles fly again, preferably including one-piece solid boosters *and* an abort system. (NASA, characteristically, is resisting both changes.)

But the wiser course would be to learn from this tragic exercise in political technology. Space transportation is a *business*. A large and growing market exists for the (unmanned) launching of satellites, both commercial and military. Established aerospace firms and entrepreneurial startups are ready, willing, and able to build cheap, simple rockets to launch these cargoes.

Grounding the shuttle—or at least restricting it to those few essential missions where human presence is actually necessary—would be a simple recognition of reality. Politicized design gave us a turkey, and a damned dangerous one at that. It's time to cut our losses, in lives as well as dollars. ◧

A Textbook Case of Coercion

Virginia I. Postrel

It's all too easy to choose sides in the Tennessee lawsuit that the press is calling Scopes II. The plaintiffs are, after all, fundamentalists. They object to textbooks that praise the Renaissance for its emphasis on man's dignity and worth. "God is to be glorified, not man," says lead plaintiff Vicki Frost.

They think *The Diary of Anne Frank* is awful because Anne says people should have a religion—but doesn't specify that it should be Christianity. They criticize books that encourage children to use their imaginations—"Our children's imaginations have to be bounded," Frost told the court. In short, if you're a sophisticate looking for villains in a civilization-versus-barbarism melodrama, these Tennessee fundamentalists are the folks for you.

But Vicki Frost and her allies, in spite of their other views, are right this time. They don't want the government, through its public schools, to coerce their children to study books that subvert their dearest principles. To understand how they feel, simply imagine that Frost ran the schools, chose the textbooks, and suspended your children if they wouldn't, on principle, read them. An unpleasant thought.

What is most significant about this case, which both sides vow to fight to the Supreme Court, is that it may mark the beginning of the end of the myth of public education. Americans tend to have a rosy view of what public schools represent—a common experience, the unifying device that creates "one nation indivisible" and brings immigrants into the melting pot.

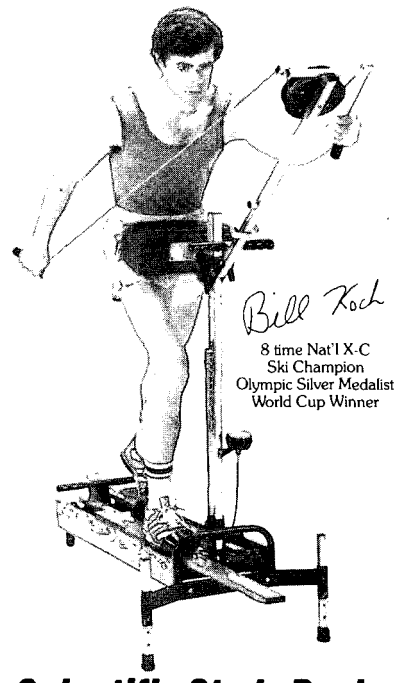
Once upon a time, this may have been true, but only because no one much worried about respecting cultural and religious differences. Jewish kids recited the Lord's Prayer; black children learned whites-only history; immigrants sank or swam in a sea of English. In the last 25 years, this attitude has changed. Now the public schools pretend they can be all things to all people, educating all, offending none, and still unifying the nation.

This is, of course, baloney. The public schools, by their nature, rely on coercion, of the mind as well as the wallet. And Vicki Frost has forced her opponents to admit it. She and the other plaintiffs want schools to offer different textbooks to accommodate the beliefs of all students.

Accommodate different beliefs? Why that would lead to chaos, cry public-school defenders. Everybody's got *something* he doesn't like. Better for the "weirdos" to take their kids elsewhere.

"We've agreed the books are contrary to their beliefs. That's not the issue," schoolboard attorney Timothy Dyk told reporters. "The issue is whether you can run a public school and accommodate these people."

To the court, Dyk said, "Sometimes the public schools are not the place for people with very pervasive religious beliefs and this is one of those cases." He undoubtedly thought he was helping his clients. But in confessing the dirty little secret of public education—that it expects private schools to take dissenters off its hands—he harmed his cause. For Vicki Frost and her friends have also asked the government to reimburse the money they've spent to send their kids to more acceptable private schools. And who knows where that might lead. ◧



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brickbats

Louis Forrisi tried to climb the peaks of legalistic foolishness. But a court told him to climb a tree instead. Still, you have to hand it to Forrisi for striving. The laborer was hired in February 1983 by the Department of Health and Human Services to climb stairways and ladders for maintenance duty. Two months later, Forrisi told his boss he suffered from acrophobia, the fear of heights, and therefore was unable to do his job. He was fired. He sued, contending illegal discrimination against the handicapped. Forrisi eventually lost his case, but it climbed all the way up to the US Court of Appeals. Why? Because it was there?

It's often a fine line between bribery and public service. That's the situation in Thailand where congressional candidate Charnchai Pairatchakul has given away 5,000 coffins over the past four years to families that could not afford proper burials. Charnchai says he was upset that bodies of accident and crime victims were left unclaimed at his district's police stations. And the families' gratitude hasn't hurt him at the ballot box. Are his campaign tactics much different from those of our legislators who finagle giant military contracts for their districts?

Pssst. Wanna see some real hot porno? Just send $35 to the US Government Printing Office and ask for the report by the presidential commission on pornography. That's the panel that spent over a year to determine that reading or viewing pornography turns people into sex fiends. Therefore, the commission called for harsh laws to ban the steamy stuff. But the commission's 2,000-page report is crammed with juicy little examples of the quivering variety, including memorable dialogue from that classic film *Biker Slave Girls*. The government has printed 4,000 copies of the report, but better hurry. If the government succeeds in censoring porn distributors, this report will have the market cornered.

A Twinkie in every belly? No, it wasn't George Belair's slogan for his losing campaign for a seat on the Minneapolis City Council. But the 71-year-old was dragged into court in handcuffs and threatened with a 90-day jail term for allegedly violating election laws. Belair spent all of $31 on Twinkies, HoHos, Kool-Aid, and coffee while wooing a group of senior citizens. The state's Fair Campaign Practices Act bars candidates from providing voters with meat, drink, or any entertainment or provisions. "I had no intention of bribing anybody with Twinkies and a cup of coffee," the losing candidate said. Charges were eventually dropped as Belair's attorney had a field day pointing out what a waste of time and public money the prosecution was. The real villains: the sore winner, Councilman Walter Dziedzic, who convinced a fool of a county Attorney, Tom Johnson, to file the idiotic charges.

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No matter how many times officials of St. Thomas, Pennsylvania, tell the federal government they don't want a $6.5-million grant, Washington's spenders insist on cramming our money down the little town's throat. The feds are adamant that the town build a new sewer system. But residents complain that its construction would lead to hookup costs as high as $2,500 per house and drive away about 20 percent of the businesses and a third of its dwellings, which are mobile homes. "We'd be far better off if we didn't have Federal money coming to town," says a town supervisor. "But it's very difficult to give money back. We've tried."

A regular snail with a broken foot could have gotten it there sooner. And the US Snail? It took 39 years to deliver a letter 90 miles. A postage stamp cost three cents in 1947 when Arizona Gov. Sidney P. Osborn wrote a letter to Mrs. Charlie Coffee of Prescott. Postal Service spokeswoman Margot Myers says, "This is one of the mysteries we'll never solve."

A 54-year-old Iowa man told a judge he's too old to go to prison. He'd prefer to be publicly stoned to make amends for terrorizing his former employer. But Ellsworth Donald Griffith's request had a catch. He insisted that only those without sin be allowed to cast stones. Judge Richard Strickler, who may or may not live in a glass house, applauded Griffith for a nice try. He then sentenced him to five years in prison anyway.

–Mark Edward Crane

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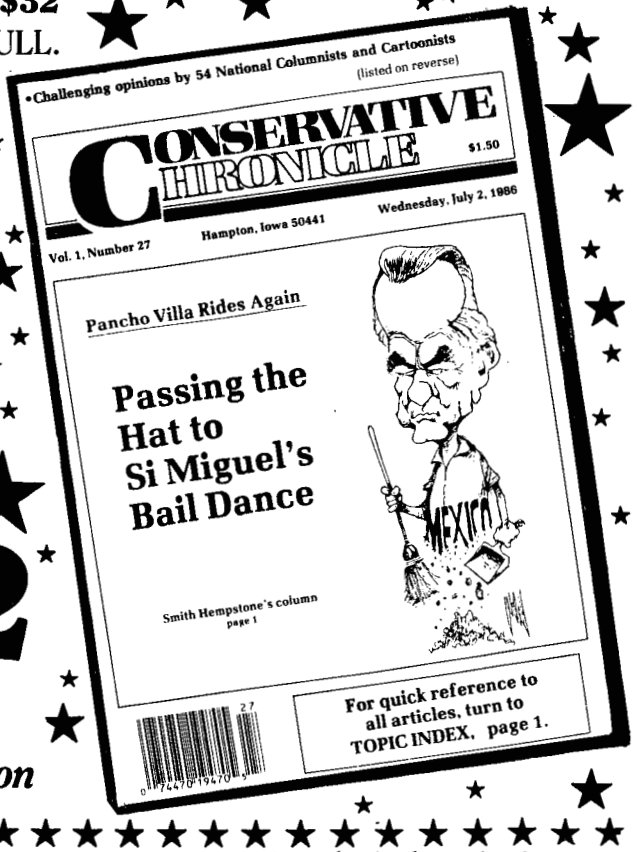
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trends

All That's Not Left Is Not Right

It took them a while, but political analysts are increasingly coming to the realization that the old liberal/conservative dichotomy just isn't enough to describe how voters and legislators think. The political world is populated also, they're noticing, with populists and libertarians.

As REASON reported in a Trends item in March 1981, the new, four-way schema was devised by William S. Maddox and Stuart A. Lilie of the University of Central Florida. Whereas liberals, they noted, generally favor government intervention in economic matters but laissez-faire in the social realm, and conservatives are just the opposite, populists favor government involvement in *both* and libertarians in *neither*. It made a lot of sense to us and to others who aren't at home with either the right or the left; and it seems to be making sense of a lot these days.

The *National Journal*, for example, for the first time in five years of analyzing congressional voting patterns, has employed this four-way description. And so it found 14 senators and 50 representatives with libertarian voting patterns. (*NJ*'s criterion: they "vote conservative on economic issues and liberal on either social issues or foreign policy." Note that finer discrimination would be possible if votes on social *and* foreign issues had to be noninterventionist before the legislator would be called a libertarian.)

The insufficiency of the old political categories is showing up in the mass media also. In a recent article discussing Ed Zschau's emergence as a serious Republican challenger to California's Democratic Senator Alan Cranston, the *New York Times* described Zschau as "a free-market conservative with libertarian instincts...[who] opposes government intervention in both the economy and personal lives."

The press in trend-setting California is similarly loosening the categorical straightjacket. The *Oakland Tribune*, reporting on how socially liberal Republicans are vying with socially conservative ones for control of the state party, noted during the Zschau primary campaign that "the overriding trait that characterizes these new Republicans is a skepticism of government—they describe themselves as fiscal conservatives yet social libertarians."

Ron Smith, Zschau's campaign manager, told the *Tribune* that many young people "tend to say 'I like where you [Republicans] are on economics but I can't stand your narrow viewpoint on social issues.' And we're saying 'Don't stay away, we hear you.'"

Political commentators seem to be hearing them too.

Afghan Rebels Turn to Hard Drugs—To Finance Their War

Rebel armies usually finance their operations the old-fashioned way: they beg, borrow, or steal. But the hardy Afghan patriots fighting their Soviet invaders have hit upon a novel method of funding—opium harvesting.

Islamic law prohibits these devout Moslems' use of opium, but not its cultivation. So Afghan rebel forces, desperate for money, have taken to growing and selling the drug on "an extensive scale," according to a *New York Times* report. Declared one elderly rebel supporter: "We must grow and sell opium to fight our holy war against the Russian nonbelievers." The *Times* reporter noted similar comments "from dozens of rebels."

Afghan hashish with anti-Soviet slogan: Turning to the black market to beat the Red Army.

PHOTOGRAPH: ANONYMOUS

Although growing opium is a venerable tradition in Afghanistan, the number of poppies has reportedly mushroomed as the resistance battles on. The Afghan crop—estimated at 800 metric tons this year—is now the largest in the world.

Once harvested, the opium is usually exported via Iran, despite the fact that the Ayatollah's government, like the US government, forbids opium use and trafficking. The drug fetches $40-$50 a pound on the black market.

Despite overwhelming evidence, US officials deny that the Afghan rebels "have been involved in narcotics activities as a matter of policy to finance their operations." Only Allah knows, then, why drugs have been showing up in the United States in wrappers with messages such as "Victory to the Afghan Rebels" and "Beat the Soviet Invaders."

Western Governors Divert Flow of Water Policy

In a move that represents a significant reversal of decades of government thinking on water, the Western Governors Association has adopted a policy proposal designed to move the West toward a market in water. The plan, adopted unanimously at the WGA's recent meeting, recommends changes in federal, state, and local water laws to encourage a more-efficient use of existing water supplies instead of relying on federally subsidized water projects.

In part, the governors' action amounts to an acknowledgment of the fact, as the Congressional Budget Office proclaimed in 1983, that "the days of huge federal outlays for equally large water projects appear to be over." Whereas for most of this century the feds tried to meet the growing demand for water in the arid West by building expensive dams and canals, in the last

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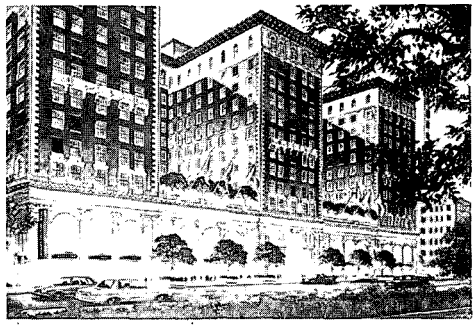

Guest of Honor
J. Clayburn La Force,
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of Management, UCLA

We've taken a major step forward—and we're ready to celebrate! To mark the arrival of *Reason* magazine and its parent organization, the Reason Foundation, in Los Angeles, we're holding a gala banquet on October 18, at the newly remodeled Los Angeles Biltmore. Headlining the evening will be Nobel Prize-winning economist Milton Friedman. Our guest of honor will be J. Clayburn La Force, dean of UCLA's Graduate School of Management. Also on the program: *Reason* editor Marty Zupan and publisher Robert Poole. Plus entertainment from economist-cum-musician Rob Kolson.

Date:	***Saturday, October 18***
Time:	***Cocktails 6:30 PM***
	Dinner 7:30 PM
Place:	***Los Angeles Biltmore Hotel (The Biltmore Bowl)***
Tickets:	***$150 a plate***

All proceeds benefit the Reason Foundation

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decade the federal government hasn't authorized a single new water project.

In addition, explains attorney Bruce Driver, who drafted the WGA plan, westerners had begun to realize that many of these projects are wasteful and damaging to the environment.

The resulting plan is described by Arizona Governor Bruce Babbitt as "the most useful and profound document" ever produced by the WGA. It recommends, says Driver, changes in "fossilized" federal laws that currently act as an impediment to market transfers of water and fine-tuning of state water laws, including issues of transfer, salvage, joint use of water, and environmental protection.

Under the present system, the sale of water by those who hold rights to it is often prevented by law, and government-developed water is sold for a song. The economically predictable result is that water in the West doesn't flow to those who value it most. To make matters worse, western water law stipulates that if the owner of water rights doesn't use all the water to which he is entitled, his entitlement will be reduced accordingly. With this use-it-or-lose-it system, those who own water rights—mainly farmers—have no incentive to conserve on water use.

Agriculture, notes Driver, now soaks up 85-90 percent of the water consumed in the West. But with agriculture in a slump, farmers these days can barely afford to pay for the water, even at highly subsidized rates. Cities, on the other hand, are willing and able to pay much more for it. The WGA proposal encourages governments at all levels to let farmers sell to cities—at market rates—the water to which they are historically entitled. Excess agricultural water would no longer be used by farmers for the sake of using it, and it would pay them to free up additional supplies through conservation.

Proponents of a market approach figure that with prices getting water allocated efficiently, much of the region's future water needs could be met without any new, environmentally taxing water projects. In California's agricultural Central Valley, for example, farmers pay a government-subsidized price of less than $10 for an acre-foot of water (an acre of water one foot deep), while San Diego water officials say they're willing to pay $200 for the same amount. Driver estimates that 10 percent of the water now used in agriculture could meet the recreational and urban needs of most growing areas into the 21st century.

Will anyone listen to the WGA? "These are *governors* who made the proposal," Driver told REASON. "That should make a difference."

Officials from the Interior Department, the biggest supplier of western water, have already agreed to work with western officials to support proposals in Congress that encourage water marketing. At the state level, there are incentives: aside from meeting the needs of growing cities, state officials have their eyes on recreational tourism, which is booming—and is hurt by water projects that damage the environment.

A lot will have to change before there is a market in water in the parched West. But the first step has been taken. "Five years ago," Colorado Governor Richard Lamm told the *Washington Post* in the wake of the WGA meeting, "we were [asking]: how do we store more water. Now, we're saying we have to look to efficiency, conservation and water rights transfers. This is a major, major change in the way the West views water."

Roads Scholars Say Markets the Way to Go

Seven hundred twenty *billion* dollars—with that many dollar bills, you could cover Delaware with plenty to spare. Or you could pick up the tab for repairs on the nation's highways and bridges between now and

The Belgian Who Refuses to Waffle

DEURNE, BELGIUM—Guy Verhofstadt doesn't hesitate to call himself a libertarian. Although this species has become better known by the general public during the last five years or so, Verhofstadt is nevertheless a curiosity: he is also vice prime minister of the Kingdom of Belgium. In fact, he is its youngest vice prime minister ever. When he accepted the nomination, after the October 1985 election, he was but 30 years of age.

Verhofstadt (Spotlighted in REASON's August 1983 issue) began his political career as a Ghent city councilman. In 1977 he became secretary to Willy Declercq, then-president of the PVV, Belgium's foremost Flemish-speaking liberal party. (In Europe, *liberal* retains its original meaning: support for individual rights in the economic *and* personal spheres of life.) Verhofstadt became president of the PVV's youth department in 1979 and three years later succeeded Declercq as president of the party itself. In the meantime, in 1980, Verhofstadt and several of his PVV colleagues had made a months-long journey to the United States to contact the numerous libertarian organizations, magazines, professors, and activists there.

Guy Verhofstadt: Can Belgium's libertarian succeed at slashing the state?

Verhofstadt's party, in coalition with Flemish and French-speaking Christian parties, has governed Belgium since 1981. It has required numerous compromises. Always, however, he has clearly stated his principles and explained why he accepted a compromise inconsistent with them.

Verhofstadt's elevation to the position of vice prime minister in 1985 was complemented by his nomination to the chief spot at the budget ministry. This position is perhaps even more important than the other. All other ministers of government must submit their budgets to Verhofstadt, which gives him some influence in the whole of the state's finances.

It's still too early to judge Guy Verhofstadt's performance in slashing the Belgian state. Tax-weary citizens will have to wait a while to discover whether or not Belgium's libertarian can succeed at this daunting task.

—Fred Dekkers

the turn of the century.

Those kinds of repair bills, combined with increasing congestion in many places, have transportation gurus worried. So worried, in fact, that they've actually begun to take a serious look at proposals for privatizing roads, both in the United States and abroad.

Economists usually consider roads classic examples of "public goods"—goods from which it is difficult or impossible to exclude nonpaying consumers—and therefore unlikely targets for privatization. But new technology has made it easier to administer toll roads. A six-month experimental program in Hong Kong, for example, attached inexpensive electronic devices to cars; when the cars passed over sensors in the road, the sensors recorded their identification numbers for later billing for road usage.

Proof that road privatization is hitting the mainstream: In July, the very establishment Transportation Research Board of the National Research Council held a conference to discuss not only direct pricing schemes, like the one used in Hong Kong, but also several papers advocating the outright sale of government highways. (And it used to be that only crazy radicals, not MIT professors, talked about selling off the roads!)

The conference attracted experts from as far away as India and South Africa. They seemed to agree that toll roads, private or public, provide a viable way to build and finance highways and can reduce congestion by pricing according to demand—charging a higher price during rush hours or on especially busy streets.

"This conference is a very significant watershed.... They've gone beyond contracting out for support services like sweeping and road repair to the point where they're actually talking about selling off roads to the private sector and the advantages and disadvantages of that," says Philip E. Fixler, Jr., director of the Reason Foundation's Local Government Center.

Toll roads might be more economically efficient than the existing system of free road use, but they could actually cost motorists some personal freedom. To make sure people don't cheat, most toll schemes call for some kind of monitoring—a kind of Big Brother in the back seat. On the toll road it operates around the city of Bergen, the Norwegian government videotapes license plates and checks the numbers against records of who has bought a monthly pass. The Hong Kong experiment used closed-circuit TV for the same purpose. And any new way for the state to grant access is also a new way to prevent access.

But the market will out. As Ian Catling and Gabriel Roth reported at the conference, Hong Kong's pilot program wasn't extended partly because citizens saw the tolls as an additional tax and partly because they didn't like having their trips monitored. If the roads were truly private, perhaps owners would have to come up with less intrusive ways to ensure payment—or face losing customers to more creative highway magnates.

Kids Just Wanna Dance?

Far be it from us to spoil a good witchhunt, but two professors at Cal State Fullerton have dumped a bucket of ice-old water onto the fires of censorship being fanned by the Parents Music Resource Center (PMRC).

The PMRC made a splash last

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Explicit lyricist Ozzy Osborne: But do the kids really listen?

year denouncing rock and roll lyrics that they figured were too salacious, satanist, disrespectful of authority, etc., for teens' ears. In the words of PMRC's Susan Baker, "It is our contention that pervasive messages aimed at children which promote casual sex, glorify suicide, and advocate the use of violence...are contributing factors" to teen pregnancies, suicide, and, doubtless, other teen problems.

The PMRC pressured most major record companies into agreeing to put warning stickers —"Explicit Lyrics"—on the jackets of controversial records. (And what red-blooded kid won't take *that* as a primo seal of approval?) But now Profs. Jill Rosenbaum and Lorraine Prinsky have found, contrary to PMRC worries, that "specific lyrics seem to be of little consequence to most kids. The musical beat or overall sound of a recording is of greater interest."

Rosenbaum and Prinsky surveyed 300 Southern California teens, using a 40-page questionnaire, to determine how deeply they are affected by rock lyrics. Among the findings, reported in the *Los Angeles Times*:

—Their most popular single song topic is love.

—More than a third of the junior high and high school kids were unable to explain what even their *favorite* song means.

—Just 7 percent of their favorites are about sex, drugs, violence, and other PMRC bugaboos.

—Perhaps "2 or 3 percent" of teens listen carefully to rock lyrics.

If teen-lyrics worriers took the time to really listen to the music, they'd probably be elated at that last figure, given the individualistic, anti-authority nature of a lot of rock and roll. If inane songs about devil worship have them in a tizzy, what would they think about lyrics like the Animals' defiant "It's my life and I'll do what I want / It's my mind and I'll think what I want"?

Bosses and Workers Steel Themselves for Profits

We hear it over and over again, usually from corporate bosses, or from union bosses, or from political bosses: the American steel industry just can't compete in the world market, what with all those lower-paid foreign workers and with all those foreign governments granting all sorts of favors to their national steel industries. So what's the solution? More restrictions and tariffs on imported steel, the bosses shout—and consumers get stuck with higher bills.

But, judging from a recent *Fortune* magazine report on a handful of innovative steel plants, enterprising execs and workers *can* find ways to reestablish their competitiveness:

•When a money-losing Huntington, West Virginia, steel plant closed down in 1982, new owners took it over, including the plant's former manager and some local businessmen. The union and the new management worked out a contract with some unusual features: workers agreed to a drastic reduction of costly work rules in exchange for profit sharing and a general no-layoff policy. Management, too, found that it could cut back: the staff in one department, for instance, was reduced by more than two-thirds, and the firm eliminated six levels of decisionmaking. With few formal work rules, workers do more in less time—and are rewarded commensurately through profit sharing. "Last year," *Fortune* reported, "the plant racked up $5 million in profits on sales of $55 million."

•When US Steel closed down an unprofitable Johnstown, Pennsylvania, plant in 1984 after the union balked at cutting the average worker's pay from $21 to $15 per hour, 700 union members were out of work. New managers bought the plant and invited the union back in, offering workers lower wages—$10.50 an hour, including benefits—but with a profit-sharing plan, which netted workers an additional dollar an hour in 1985. Since it started shipping its products to buyers, the revamped Johnstown Corp. has turned a profit, with $24 million in sales last year. And, *Fortune* reported, "morale is so high that workers have gone in on Saturdays to clean and paint equipment on their own time."

•In Marion, Ohio, new investors took over a small plant formerly owned by Armco but shut down in 1981. After an initially difficult period that included bankruptcy, the reorganized Marion Steel Co. now makes a profit. The nonunion workers share in the profit, which in the last half of 1985 added $1 to their $14-an-hour wage (down from $23 an hour, including benefits, under Armco management). Last September the union tried to reorganize Marion's workers: they rejected the move, 204 to 23.

•In 1980, the nonunion McDonald Steel Corp. started leasing US Steel's closed-down rolling-mill plant near Youngstown, Ohio, and has seen its business grow by 10 percent a year ever since. Last year McDonald had earnings of $1 million on sales of $24 million. The new management has shifted much managerial responsibility directly to workers, dispensing with such formalities as requiring workers to punch time clocks, for example.

Now, *Fortune* reported, a few of the big steelmakers are taking lessons from these innovators and introducing their own experiments with profit-sharing plans and work-rule-reduction agreements with unions. To save a US Steel operation near Birmingham, Alabama, for instance, the union agreed to toss out traditional work rules and to cut the work force from 5,000 to 2,100, while the corporation invested in new equipment. The result: the plant now produces a ton of steel with just half the labor it took before.

These examples suggest that the competitiveness of the American steel industry is mainly a domestic problem of bosses and workers cooperating to lower costs and increase productivity. When the next round of protectionist alarms goes off, perhaps these innovators' experience will belie the cries of helplessness in the face of foreign competition.

Milestones

■ *News on first.* The wishy-washy Supreme Court does it again. The court ruled unanimously in June that cities may be violating the First Amendment when they grant local monopolies to cable TV companies. The decision, which sent the case in question back to district court, could encourage suits by cable companies that have been locked out by city-granted monopolies. Like newspapers, said the opinion, "cable television partakes of some of the aspects of speech and the communication of ideas." The wishy-washy part? "The First Amendment values," added the justices, "must be balanced against competing societal interests."

–Robert W. Poole, Jr., Lucy Braun, Bill Kauffman, and Virginia I. Postrel

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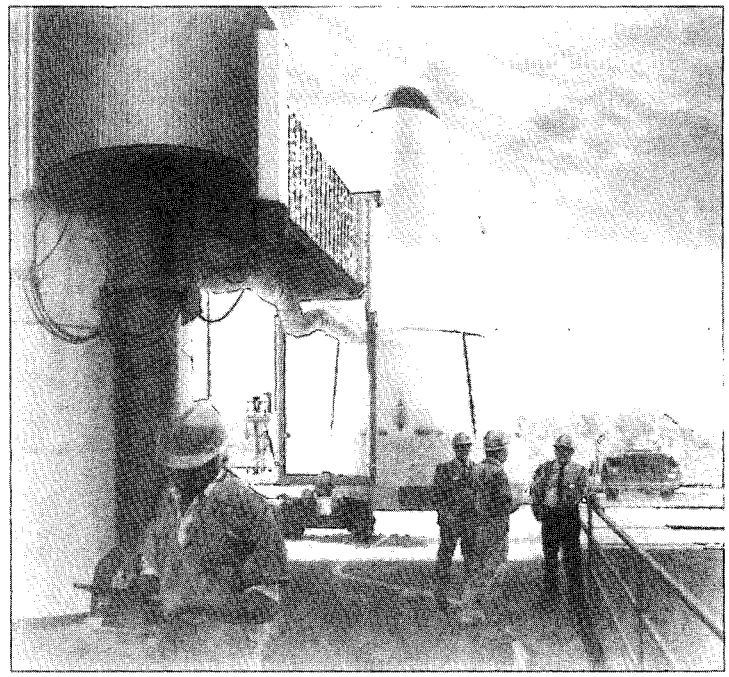

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They work for the government, not for riches. Their tool is rent control; their motive, helping tenants. But they're turning Berkeley into a genteel slum.

Berkeley's Radical Slumlords

Beverly Potter pulled into her Berkeley, California, driveway one afternoon in August 1985 to find a strange woman parked there. To Potter's great bewilderment, the woman called her by name and identified herself as a Humane Department officer. "She said something about dogs jumping out of windows with no fur. I was dumbfounded," recalls Potter.

The Humane officer apparently intended to cite Potter for cruelty to animals but backed off when it became clear that Potter knew nothing of the dog in question. It turned out to be one of two dogs belonging to a "short-term guest" of one of the tenants in the four-unit apartment building that Potter and her husband own next door to their house.

That is when Beverly Potter's troubles began. For the next 22 months, she was lost in the Twilight Zone of Berkeley rent control—a world where logic often seems topsy-turvy and justice nonexistent. Policies justified in the name of progressivism made innocent victims of Potter, her neighbors, and her law-abiding tenants. They also took four apartments off the Berkeley rental market—one permanently—and thus exacerbated a decades-old shortage. Potter's story is one of many, but its very extremity illustrates the bizarre effects of Berkeley's rent control.

The Humane officer showed up after Potter's neighbor, Jeanne-Cybele Bantowsky, called the department in a panic. Bantowsky later recalled watching in horror as what looked like "an over-grown rodent" or "a survivor of a nuclear holocaust" climbed onto the apartment's window ledge.

"The wretched thing looked as if its intention was to jump, as if that were better than remaining in that second-floor room," she said. Finally, the creature lunged off the ledge. Bantowsky ran to its aid and found, to her relief, that it had survived.

Approaching closer, she saw that the dog had open sores and "scabs all over his body. His skin was dry and cracked with dried blood in patches and no hair to speak of."

Since no one appeared home in the apartment building, Bantowsky bundled the dog up in a towel and took him to the local Humane Society. The veterinarian on duty informed her that the dog was suffering from sarcoptic mange, a parasitic skin disease that is extremely contagious to humans and other animals if direct contact is made. The mange also afflicts the suffering animal with what one Berkeley animal-control official describes as "a very strong odor which is unpleasant to anyone's sensibilities." The dog was, in short, a health hazard.

The evening after learning about her tenant's guest and his dogs, Potter went to see her. She reminded her of the terms of their written rental agreement, which allowed two cats to live in the apartment but prohibited any other pets. It also specified that no guest could stay longer than three nights.

by **Jeff Riggenbach**

According to Potter's neighbors and other tenants, the tenant's friend had been living in the building for weeks, along with the dogs, both of which suffered from mange. The animals had been locked inside the one-bedroom apartment day and night, and the stench from their waste and disease was beginning to permeate the entire building.

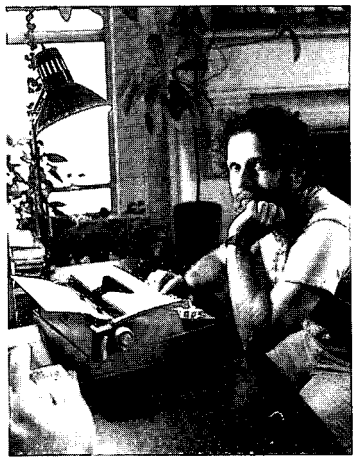
After begging Potter not to throw him out immediately, the tenant's friend agreed to leave within a week. And the tenant herself promised to clean up the mess and then let Potter inspect the apartment.

But things soon went from bad to worse. Potter and her other tenants began to find dog droppings in the building's common stairway and wrapped dog feces, treatment rags, and fouled dog bedding in the bushes. When a week had passed, the "guest" simply locked his two sick animals in the car he had parked in the driveway that Potter's house shares with the apartment building. "This was not what I had in mind," she says dryly. "I had in mind those dogs *gone*."

On August 31, Potter sent her tenant an official 30-day notice to vacate the apartment. It enumerated six blatant violations of the rental agreement and noted that Potter had discussed them with the tenant and her friend two weeks earlier.

There the matter should have ended. But this is Berkeley.

The tenant complained to the Rent Stabilization Board. And on September 13, the board notified Potter that her eviction action was invalid because her property was "not completely registered." Potter, it



"What I see," says activist Marty Schiffenbauer "is a lot of tenants fixing up their homes, knowing they have the security of being able to stay." But the rent-control law he wrote wouldn't let Beverly Potter evict the illegal tenant who had left his previous home looking like this.

PHOTOGRAPHS BY GEORGE T. KRUSE

seemed, had failed to fill out Registration Form item I-F. This perplexed her, since when she looked at her own copy of the form, Potter found that she had completed item I-F.

Items I-C and I-D asked for the name and address of the rental property's owner, Baystar Investment Group. Items I-E and I-F asked for the name and address of the property manager. Since Potter *is* Baystar and is also the building's manager, she had merely written the word "same" when asked, in item I-F, for the address of the property manager. But the rent bureaucracy decided that this answer constituted a failure to register her rental property.

Gritting her teeth, Potter completed item I-F to the board's satisfaction and reevicted her tenant. On October 25, the board informed her that her latest eviction action was invalid because the rent she had been charging her tenant "appears to be illegally high." Potter demanded to know on what basis this determination had been made, since she had made every possible effort to comply with the law. On November 19, the rent board responded that "a mistake was

made by this office" and that "further review of the file indicates that the rent does not appear to be illegally high."

By this time, the nightmare in Apartment C at 2308 Haste Street had gone on unabated for more than three months. The other tenants in the building, tired of complaining, had moved out. The troublemaking tenant herself had frustrated Potter's every attempt to inspect the apartment and determine the exact extent of the damage to her property. On October 7, the tenant notified Potter in writing that "I am having the lock on my apartment door rekeyed...and do not wish to give you the key at this time."

"By law," she wrote on October 31, "I am not required to allow you access to my apartment for the purpose of inspections....As there are no agreed-upon repairs to be made in this apartment, I will not allow you access."

Potter finally got her uncooperative tenant out of the building in mid-January of this year, more than five months after making her first attempt at eviction. Even then, she got her property back only after buying off her tenant for $2,000 and eight months of unpaid rent. Otherwise, things might have gone on much longer, and the sight Potter beheld when she recovered her rental unit might have been much worse.

Inside Apartment C, Potter found trash, dog droppings, and "places where [they] had painted over the dog excrement on the floor and on the walls." But her ordeal was not yet over. Now that her building was empty, she decided to take the opportunity not only to repair the damage her tenant and the dogs had done but also to make some general improvements.

"We tried to fix up the building," she says. "We went in, we put in new carpets and new floors, we repaired or replaced all the light fixtures, we put in new sinks, we upgraded."

Then she and her husband attended special classes offered by the Rent Stabilization Board to learn the proper method of obtaining an Individual Rent Adjustment. These adjustments are supposedly granted by the board to landlords who incur unusual operating expenses by, for example, improving their buildings. Since Potter and her husband no longer had any tenants, they assumed that the rent board wouldn't object to their proposed rent hikes. They therefore filed a "fast track petition," which the board says it will approve or disallow within 30 days.

Instead, the board took 45 days to get around to Potter's case. Ultimately, her rents were rolled back, not increased. Based on a technicality dating back to previous owners, the rent board decided that her registration had not been "perfected" until 1985. That meant she hadn't been legally entitled to the annual rent increase granted in January 1985 to all landlords in the city—this despite the notification she had received in November 1985 stating that her rents did "not appear to be illegally high."

Potter applied for a rehearing. Finally, on June 18—seven months after she had filed her "fast track petition"—the board granted modest rental increases on her three studio units. The one-bedroom apartment where the dogs once lived now has a legal rent $100 less than its smaller neighbors. It stands empty, too cheap to be rented, and will remain unoccupied unless Potter can sell the building to a landlord who will live in the larger apartment.

> ***"The stupidest thing we ever did was to believe the rent board's literature and try to get our lawful increases."***

While awaiting the board's decision, Potter couldn't rent her apartments. Under Berkeley's rent law, a landlord who does so without knowing the legal rent runs the risk of later being ordered to refund every cent he has collected. Except for two temporary tenants who stayed two months each, no one lived in Potter's building for half a year.

"The stupidest thing we ever did," says Potter, with weariness but not resignation in her voice, "was to believe the rent board's literature and make an application in good faith to try to get our lawful increases."

Beverly Potter's story is not unique in Berkeley these days. Senator Nicholas Petris, who represents Berkeley and part of adjacent Oakland in the California legislature, says his office has received "hundreds" of letters from landlords telling stories of the same general type. What sets Potter apart from them is her willingness to talk. Most Berkeley landlords, Petris's aide Felice Tannenbaum told me, are afraid to discuss their experiences with reporters, fearing reprisals from angry tenants or even rent officials themselves. It is difficult to verify that such acts of revenge have really taken place. But the fear is there. And it is real.

The town of Berkeley, California, was created by government fiat in 1864 as the site for the first campus of the newly created University of California. It was named after George Berkeley, Bishop of Cloyne (1685-1753), who pronounced his name BARK-ley, not BERK-ley, and who was known in his day as an advocate of radical ideas. The most notorious of these was the doctrine that "to be is to be perceived"—that a thing that no one is aware of simply does not exist.

At first glance, George Berkeley may seem to hold little sway in the town that bears his name. Even in this intellectual haven, most residents have probably never heard of, much less read the works of, the Bishop of Cloyne.

Nevertheless, the Berkeley of today is a fitting memorial to the long-dead clergyman. For starters, Berkeley's many radicals call their doctrine "idealism," which is just what George Berkeley called his. And there is abundant evidence to suggest that today's Berkeley radicals also agree with the bishop that "to be is to be perceived." They ignore the victims of rent control, then declare that they do not exist.

Even the blindest radicals admit that Berkeley suffers from a major shortage of rental housing. And one of the first things I learned when I visited the San Francisco Bay Area myself is that the shortage existed long before rent control. Local government had seen to that. By interfering in the housing market, it had enabled Berkeley landlords to charge higher rents than a genuinely free market would have tolerated. In effect, local government created the conditions that eventually made rent control seem reasonable to a majority of Berkeley voters.

It all began in the 1960s, a period of rapid population growth for Berkeley and the entire Bay Area. The sudden coming-to-college-age of the oldest baby boomers led to a sudden and dramatic increase in the local student population. At the same time, thousands of other young people headed for the Bay Area, drawn by its role as a major center—perhaps *the* major center—of the new youth culture.

All this, on top of the region's normal growth, created an enormous increase in the demand for housing. During the mid-'60s, Berkeley experienced what pro-rent-control activist Marty Schiffenbauer calls "a short period when there was a whole lot of construction." During this period, it was possible to find an apartment in Berkeley at a reasonable price. But, as Schiffenbauer says, "people complained about that. [The developers] were tearing down old houses

No vacancy: At the low legal rent, Potter and her husband won't accept any new tenants in the renovated one-bedroom apartment. Below, Potter points out the second-story window from which the dog jumped.

and putting up these ticky-tackies in the neighborhoods."

So the residents of Berkeley "put a stop to it finally in '73. They passed what was called a Neighborhood Preservation Ordinance." And that, says Schiffenbauer, "pretty much eliminated construction of any rental housing" in the city.

Nor was—or is—the Neighborhood Preservation Ordinance the only disincentive to building new rental housing in Berkeley. "Anti-condo-conversion ordinances, anti-change-of-use provisions, rezoning, downzoning." Berkeley landlord Martin Overstreet ticks the interferences in the housing market off on his fingers. He speaks emphatically but very softly, so softly it's almost difficult to hear him, and he radiates a kind of contained intensity, as though he'd explode if he didn't keep himself constantly under restraint.

All this government tinkering, he says, makes it "economically ridiculous to contemplate" investing in new rental housing. To make matters worse, Berkeley requires 25 percent of the units in new apartment complexes to be low-income, low-rent apartments. With construction costs running $60 to $90 for "pretty ticky-tacky stuff," Overstreet says, no developer can afford to meet that requirement.

So the supply of new rental housing was cut off and the population was steadily growing. Rents on available apartments had no place to go but up. Since tenants make up more than 60 percent of the city's population, rent control became a viable political issue.

It first appeared in 1972, as a local ballot initiative proposed by a coalition of New Leftists. The initiative passed narrowly that June but was immediately challenged in court. Four years later it was ruled unconstitutional by the California Supreme Court, which held that its "inexcusably burdensome" procedures for obtaining rent adjustments constituted a denial of due process to property owners. In the same case, *Birkenfeld* v. *Berkeley*, the court ruled, however, that rent control is not in itself unconstitutional as long as it permits landlords a "fair return" (a phrase the court left undefined) on their investments.

Then, in June 1978, came California's Proposition 13. This famous statewide ballot initiative slashed property taxes by one-half to two-thirds. As its principal sponsor, Howard Jarvis, campaigned for the proposition across the state, he argued that tenants should support it because lower tax bills for landlords would mean lower rents for tenants. Tenants bought the argument, supporting Proposition 13 by a substantial margin.

After the measure passed, though, most landlords did not reduce rents. It isn't clear, of course, that anyone should have expected them to. Supply and demand, not just costs, determine how much an owner will charge for an apartment. And property taxes are only one of the many costs that owners have to shoulder. Doubtless, all else being equal, the savings landlords experienced as a result of Prop 13 would have been passed along to tenants eventually, in the form of smaller and less frequent rent increases than what they otherwise would have experienced.

Thousands of tenants believed, however, that they had been promised rent cuts. And when they didn't get them, they felt betrayed. Thus it was that late in 1978 and early in 1979, laws imposing various government controls on rents were enacted in a number of California cities, mostly places where tenants outnumbered property owners.

In Berkeley, the first law enacted was the local ballot initiative Measure I, which passed in November 1978. It rolled rents back to the level of June 6, 1978 (when Prop 13 passed), barred retaliatory evictions, and imposed a rent reduction equal to 80 percent of landlords' Prop 13 savings.

Before Measure I could expire, Berkeley's city council enacted a rent law that included most of the same provisions and added a five-percent ceiling on annual rent increases. This ordinance was superseded in June 1980 by Measure D, a ballot initiative that set detailed rules for evictions and created a rent board to set maximum rents.

Landlord Martin Overstreet says rent control pushes owners to avoid tenants with kids. "I know how destructive they are and so does every landlord."

Two years later, Measure D was amended by popular vote to allow the board to impose more-severe penalties on landlords and to bring previously exempt three-unit and four-unit buildings under rent control. Today, the only apartments in Berkeley that are exempt from rent control are duplexes in which one of the two units is owner-occupied.

Owners of all other rental properties are required to register them annually with the rent board and pay a fee of $60 per unit. These fees foot the bill for the rent board's annual operations.

Each January, after holding at least two public hearings, the rent board decides whether rents in Berkeley should change. It also hears applications from landlords who believe extraordinary circumstances entitle them to larger rent increases and tenants who believe they deserve rent decreases because they have been illegally overcharged or their housing services have been reduced.

By usually favoring tenants, Berkeley's rent control encourages them to take advantage of their landlords, who are usually unsophisticated small owners, not big developers. (With 150 rental units, Martin Overstreet's company is one of Berkeley's three largest landlords.) Even when satisfied with their apartments and rents, tenants find it hard to resist the potential of cold, hard cash. "The current law is an irresistible lure to larceny," former rent-board head Doris Maslach told *California Business* magazine last year.

Take the case that attorney Bruce Reeves cites as a particularly outrageous instance of landlord abuse. "I've got a tenant," he says, meaning a tenant of one of his many landlord clients, "whom I just bought out of a property for a second time. She rented the property knowing full well what (Berkeley) rent control was and what the rent should have been. The landlord probably should have known that her single-family dwelling was subject to rent control, but she didn't really consider it."

Landlord and tenant "bargained for the place," he recounts, "both of them understanding full well that this was the real value of the property." But a few years later, the landlord decided it was time to sell the place and evict the tenant, and "the tenant was all of a sudden very shocked."

"She said, 'Gee, you mean I have to leave? Well then, I guess I'll just have to go talk to the rent-control people, because you're charging me too much.' We just bought this young lady off for $10,000."

As the case proceeded, Reeves realized that he "had bought this same woman out once before." A secretary in a law office, the tenant "knew full well what she was getting into," he says. "It was only when the rental relationship was finished that she decided she wanted her money back. And she was legally entitled to it."

Reeves sighs and looks out the window of his office in a refurbished Victorian house on picturesque Alameda Island, about 15 minutes by car from downtown Berkeley. He sounds tired, or maybe disgusted.

"She agreed to pay what was being asked and said she was satisfied and lived there for two and a half years," he says. "So what is the rationale behind what the rent law says, in that kind of circumstance?"

The rationale, of course, is that rent control helps tenants, especially poorer ones, afford decent housing. But Berkeley's laws actually victimize tenants, not just landlords, and often benefit affluent professionals at the expense of poor people.

One of the principal aims of rent control's advocates, notes Martin Overstreet, "is to maintain the economically diverse, the culturally, the racially diverse community." But, he observes, the effect is just the opposite. "An owner can no longer compete with other owners in the marketplace on the basis of rent. He or she can't control anything about the rental property *except* really to whom they rent. When the unit becomes vacant, who are they going to rent to?

"You tell me, if you're an owner in this position and you've got yuppies with BMWs applying for your apartments, who are gainfully employed in downtown Oakland or San Francisco in the noble professions, and you've got students without visible assets or income, and then you've got single mothers with young children—I've got a two-and-a-half-year-old, and I know how destructive they are and so does every landlord in Berkeley—and then you've got minorities with no good employment records, limited education, no assets, no credit references. Who's going to get that apartment? The same old yuppie couple with the BMW and the bank accounts and the attachable assets and credit references and the gainful, steady, reliable employment. That's who's going to get it, and that's who's getting it."

Even some leftists are beginning to notice that rent control hasn't helped poor people. Earlier this year, the Center for Community Change, an Oakland-based organization that provides housing aid to low-income tenants, released a study entitled "Who Benefits from Rent Control?" It concludes that the principal beneficiaries have been middle-class people who could afford market rents and now spend their money on such luxuries as gourmet food and stereos. And it declares that rent control, notably in Santa Monica and Berkeley, has driven away landlords and cut off new construction. All, it notes, without protecting the "elderly, poor, or minorities from unreasonable rents."

Thanks to rent control, however, even BMW owners looking for places near Chez Panisse have a tough time finding apartments in Berkeley. Stroll the streets and you'll see notices posted on telephone poles offering hefty rewards for anyone who can find the advertiser an apartment—just about

any apartment, even one that's a bit on the shabby side, as so many are these days. Rental units are simply disappearing.

But rent-control supporters like Marty Schiffenbauer, co-author of the Berkeley law, don't see the victims. And if they don't see them, they don't exist. As Bishop Berkeley put it, to be is to be perceived.

Most cities rent-control laws provide for vacancy or sale decontrol—an owner can raise the rent on a unit that has been voluntarily vacated or sold. Not so in Berkeley. As Michael St. John, a consultant to Berkeley property owners, told me: "The rent law has it that the rent sticks with the building through ownerships and through tenants. There's no vacancy decontrol. There's no sale decontrol. There's *no* decontrol. After a while, as years go on and inflation continues and the rent becomes super-low...that's it—economically speaking, you can't rent those units anymore. It's not economically feasible to rent them. You have to sell them."

But to whom? Is anybody interested in buying rental units in Berkeley with rent control in effect? In fact, according to landlord Martin Overstreet, "it's a very depressed, flat market." Landlords who are able to sell must accept below-free-market prices. Most just stick it out and gamble that Berkeley's rent-control law will be shot down in the near future, either by the courts or by the legislature.

The situation is better for owners of smaller buildings—thanks to buyers eager to become homeowners at artificially low prices and willing to circumvent the city's ordinance against condominium conversion. "The market is popping for owner-occupants," says St. John. "Middle-class people love to live in Berkeley in formerly rented places—nice brown shingle houses or little apartment buildings where three people get together, form an agreement, and live there." Some buyers are parents of university students who can't find rental housing in Berkeley's tight market.

Even some rental units within larger buildings are now being sold this way, according to St. John. "A market is developing in rental units that never used to be here before," he says. "Pieces of buildings are being sold, in a partnership sense. It's cumbersome and it's awkward, and the city of Berkeley says it's against public policy, but it happens nevertheless."

In fact, the city of Berkeley considers multiple owner-occupancy of apartment buildings flatly against the law. Manuela Albuquerque, who took over as city attorney last spring, has issued an opinion concluding that any attempt by two or more joint owners to move into an apartment building they have purchased violates the city's 1980 condo-conversion statute. The law bans the conversion of apartments to condominiums as long as the rental vacancy rate citywide is under five percent. It's currently three percent. But groups of owner-occupants are still taking over former rental housing.

How many rental units has Berkeley lost because of rent control? Nobody knows, really. Nobody will know until the 1990 census figures come out. But there are some early indications.

One survey conducted three years ago by the Berkeley Board of Realtors turned up 700 individual cases in which owners admitted that they had sold their rental property to owner-occupants specifically because of rent control. But landlord Overstreet notes that most property owners are reluctant to acknowledge that rent control was their reason for selling, even if in fact it was. They don't want the attendant publicity. They don't want to be portrayed in public as hard-hearted beasts who don't care if people have to sleep in doorways. So Overstreet regards the 700 figure as conservative. His own estimate is about three times the official result.

For his part, consultant St. John figures that since 1978 Berkeley has lost 300 to 500 units a year because of rent control—2,100 to 3,500 units as of the end of last year. "And the rate of loss is accelerating," he says. Since Berkeley had some 23,000 rental units in the 1980 census, if either St. John or the Board of Realtors is right, between 9 percent and 15 percent of the city's rental housing stock has disappeared as a result of rent control.

And the units that remain are no longer being maintained so well. St. John, who often inspects clients' rental buildings to check for compliance with local codes, has seen a substantial portion of the town's buildings up close. His verdict? "It's my professional belief that buildings in Berkeley are rotting from within. It took 20 years for massive deterioration to show up in New York under rent control. We've had seven years so far here in Berkeley."

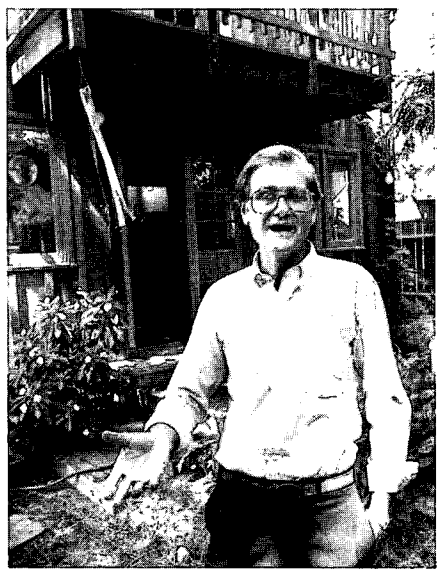
From his shabby, rent-controlled apartment a few blocks from the university, Marty Schiffenbauer claims he doesn't see deteriorating housing. And if he doesn't see it, it doesn't exist. To be is to be perceived.

"What I see is a lot of tenants fixing up their homes, knowing they have the security of being able to stay in their apartment. So they say, 'I'll paint it. I'll spend some money on the place.' " Even when this is true, however, it means that tenants have assumed responsibilities once held by landlords—in effect, a rent increase.

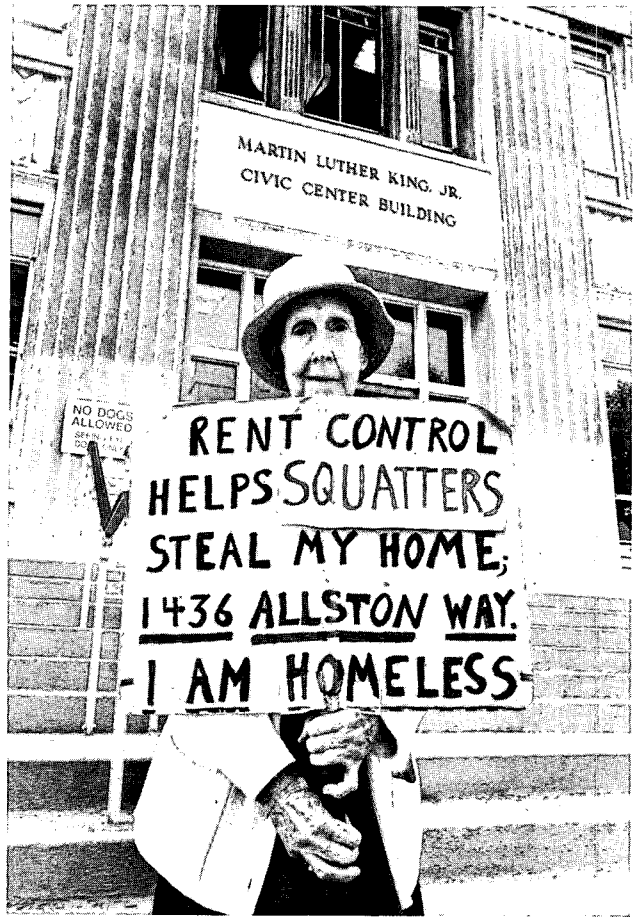
As long as official rent levels rise more slowly than costs, something has to give. "Anyone who drives through Berkeley," says Martin Overstreet, "can see that it's beginning to acquire the flavor of a Third World country. Buildings are looking shabbier and shabbier, as owners are forced to neglect them. The rent board maintains that its annual adjustments over the past six years have been sufficient to offset increased operating expenses, not including debt service. Well, that's hogwash."

This year, he says with disgust, "we got a glorious 3 percent, the year before that 2 percent, the year before that a 0 percent increase, in the context of about 5 percent inflation. The year before that we got 4.75 percent, in the context of 8 or 9 percent inflation."

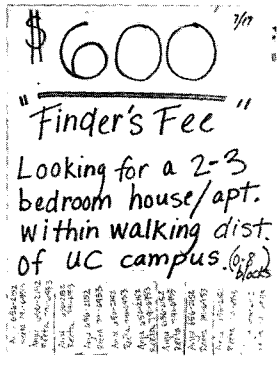
Overstreet says his partnership isn't yet losing money on its own buildings because he raised the rents in anticipation of rent



"Buildings in Berkeley are rotting from within," says consultant Michael St. John.


MARTIN LUTHER KING, JR.
CIVIC CENTER BUILDING
NO DOGS ALLOWED
RENT CONTROL HELPS SQUATTERS STEAL MY HOME; 1436 ALLSTON WAY. -I AM HOMELESS-

Landlords aren't rent control's only victims. Flyers offering hefty finders' fees are common on Berkeley telephone poles, and some property owners have taken their case to the streets—and to former Black Panther Eldridge Cleaver (below).



control just before it took effect, because he has "cut way back on maintenance," and because he has stopped undertaking improvements altogether. But he says he will begin losing money within two to four years if the rent board continues to grant the meager annual increases that have characterized the past several years.

To abolish rent control, whether in Berkeley or in any of the dozen other California communities that have enacted it in the past decade, opponents have three possible routes. There are the courts. There is the state legislature. And there is the initiative process.

The courts seem to offer little hope to any but the most mindlessly and incurably optimistic. Hundreds of lawsuits have been filed against rent-control laws over the years. Three hundred lawsuits have been filed against the law in Santa Monica alone; yet that law, which strongly resembles the one in Berkeley, has emerged for the most part unscathed from all that litigation. The current Berkeley law, too, has survived every court test to which it has been subjected.

Most recently, in late February of this year, it was upheld by the US Supreme Court, which refused to buy the argument that rent control is a type of price fixing forbidden by federal antitrust laws. Only liberal Justice William Brennan dissented from the ruling. The judiciary has made it clear that it considers rent control a legitimate type of government activity.

This is not to say that the judiciary necessarily favors rent control. The words of the California Supreme Court in the 1976 *Birkenfeld* case seem representative of judicial opinion on the matter. Rent con-

trols, said the majority opinion, "discourage construction or improvement of rental units, exacerbate any rental housing shortage, and so adversely affect the community at large. [But] such considerations go to the wisdom of rent controls and not to their constitutionality."

What about the state legislature? Every year for the past decade, property owners have attracted sponsors for bills to loosen rent control. But only the first one, proposed in 1976, has passed. It was vetoed by then-governor Jerry Brown. Since then, several anti-rent-control bills have passed the lower house of the legislature, where landlord lobbyists have the most influence. But not one of those bills has made it out of committee in the state Senate.

Dan Walters, the highly respected political columnist of the *Sacramento Bee*, contends that this state of affairs has been engineered deliberately by Senate President Pro Tem David Roberti of Hollywood, "whose own district is heavily populated by renters and where pro-rent control sentiment approaches the fervor of religious conviction.

"Roberti annually arranges, therefore, for the anti-rent control bill to be sent to the Senate Judiciary Committee, which is dominated by liberal Democrats such as himself, unlikely to interfere with rent control laws. And there the bill has annually resided until dying of old age."

One of the legislature's most outspoken critics of the Berkeley rent control law has been state Senator Nicholas Petris. A longtime liberal who has often supported rent control in the past, he says the way the Berkeley law is enforced is arbitrary and dictatorial. Rent officials there, he says, have it in for landlords and want to "drive them out of business."

And, as Petris sees it, "people who do that are not liberals. They are no better than any kind of totalitarian government. There are landlords who live in fear." In Berkeley today, he says, "the oppressed are the landlords, and I'm fighting for them like I fought for the tenants."

Those are fighting words, no doubt about it. But Petris's bark turns out to be considerably worse than his bite. The two anti-rent-control bills he sponsored in the legislature's last session were models of mildness. One would have modified Berkeley's rent law to prevent landlords from being severely penalized for "minor procedural errors or omissions." The other provided that, when the legal rent on a unit is in dispute, the tenant would pay into an escrow account, instead of paying no rent at all—the current practice in Berkeley. Neither bill passed.

Petris's office says that he'll withdraw his support from even these minor reforms if Berkeley rent officials can convince him that they've become less arbitrary and capricious in their enforcement practices. That seems unlikely. But this is still pretty weak stuff from a man who criticizes the Berkeley law so vociferously—and who is himself one of those victimized landlords. Petris owns 20 units in Berkeley and has had a few run-ins with the rent board.

Rent-control officials want to drive landlords out of business, says state Senator Nicholas Petris. "People who do that are not liberals. They are no better than any kind of totalitarian government."

What about the initiative process? Is there any chance the voters of Berkeley will realize their folly and support a ballot initiative to deregulate rents? At present, it doesn't seem likely. As columnist Walters points out, someone who passes for a moderate in Berkeley would be considered a flaming liberal anywhere else. Even Berkeley's severest critics of rent control, men like attorney Bruce Reeves and landlord consultant Michael St. John, are careful to explain that they don't oppose control in all cases. They merely oppose the unduly harsh, unduly restrictive version of it now in effect in their city. With enemies like that, rent control doesn't need any friends.

On the other hand, Martin Overstreet says he believes the city government in Berkeley has become so bizarre, so extreme, since 1984 that even the staunchly left-wing Berkeley electorate is going through what he calls "a process of reeducation." This process, he says, will ultimately lead citizens to recognize the error of their ways. It was in 1984 that Berkeley Citizens Action (BCA), which Dan Walters calls "the most radical of the city's political splinter groups," won a majority on the city council.

The BCA-dominated city council is led by Mayor Gus Newport, who logs thousands of miles a year spreading Berkeley's social gospel in the United States and in Third World capitals. He has dubbed one of his talks "The People's Republic of Berkeley." Walters reports that "when US troops invaded Grenada, one of the documents they discovered was a report on a trip to the Bay Area by Grenadian officials that included a praiseful account of their visit with 'Comrade Gus Newport.' "

Meanwhile, the city council has done its best to eviscerate the one marginally anti-rent-control law that made it through the legislature last year. The so-called Ellis bill permits landlords to take their units off the market and go out of the business, regardless of local "just cause" eviction regulations.

Early in June—a month before the law took effect—the Berkeley City Council passed an ordinance that requires landlords to give tenants at least six months' notice before withdrawing from the market. More recently, it passed another law requiring landlords to pay tenants "relocation expenses" of $4,500 per apartment before they can recapture their property under the Ellis bill. In such a political climate, rent control seems as permanent as death and taxes.

But even if Berkeley's citizens woke up tomorrow as Reagan Republicans, rent control would probably survive. Despite all the evidence that it victimizes tenants and would-be tenants along with property owners, the biggest factor mitigating against any popular movement against rent control is the fact that nearly two-thirds of Berkeley's residents are tenants. Rent controls are seldom adopted except in cities where tenants are in the majority and, once in place, they are almost never repealed. Focusing only on the short-term, direct effects, few tenants will vote to increase their own rents.

And there the matter would seem to rest. As the Swedish economist Assar Lindbeck wrote in 1971, "Next to bombing, rent control seems in many cases to be the most efficient technique so far known for destroying cities."

But, so far as Berkeley tenants and activists are concerned, if you don't see something, then it doesn't exist. For in Berkeley, to be is to be perceived. ◧

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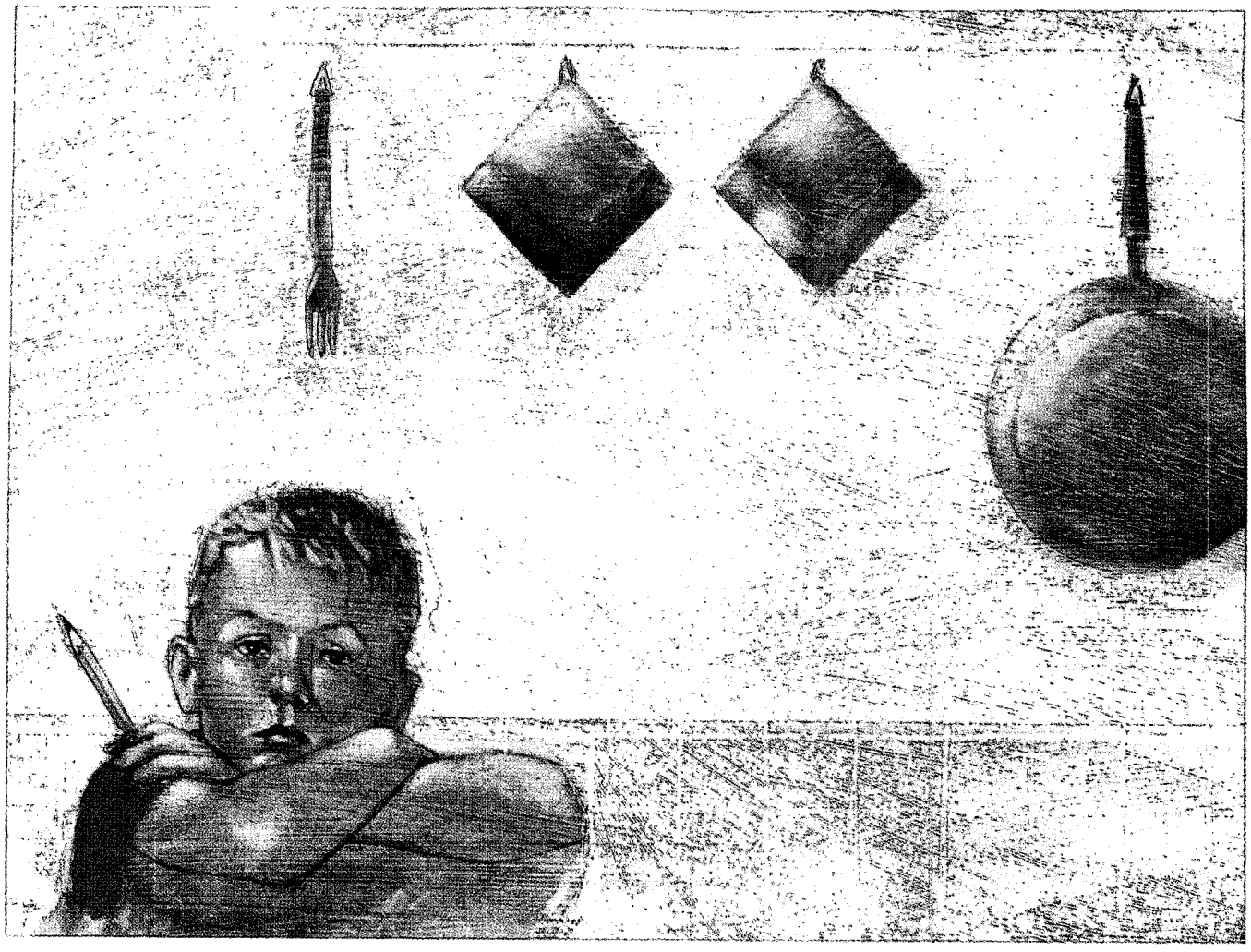


Home Sweet School

The education of a home-schooling family.

Monday through Friday mornings bring turmoil to most families with school-age children, but the Kolesnik household remains calm. No cries of "Hurry up and get dressed!" or "Get your books—here comes the bus!" echo through the house. Instead, 11-year-old Jason comes downstairs, leisurely eats his breakfast, and starts les-

by Michael Kolesnik

ILLUSTRATIONS BY TIM TEEBKEN

sons while still in his pajamas. He is a home schooler. Three years ago, we had never heard of home schooling. Now we cannot imagine educating our son any other way.

When Jason was in the second grade, we considered various ways to enrich his education. His classroom teacher encouraged us and even suggested that we might educate Jason at home. (Our tiny Vermont town doesn't have any private schools.) We looked into correspondence courses and talked to a couple of home-schooling families. But inertia won out. We didn't decide anything, so Jason advanced to the third grade.

That year, however, he began to dislike school. In his two-room elementary school, third-graders shared the class with first- and second-graders. With three different grades to accommodate already, the teacher didn't have time to deal separately with a child like Jason, who was reading at a much higher level than his fellow pupils. He was often bored and wasted more time than he used productively. Yet he still came home tired after school, making it hard for him to concentrate on piano lessons or do things with us as a family. During Christmas vacation, my wife, Sami, asked Jason if he would like to do his schooling at home. He responded with great enthusiasm and made home schooling his "New Year's Revolution."

To legally teach Jason at home, we had to comply with state regulations. We worked frantically to complete the application and submit the required documentation so our son would not be considered truant. Certain items, such as a daily schedule or the name of our local superintendent, seemed irrelevant. Nevertheless, we dutifully filled out each section. We submitted everything the state required—about 25 typed pages describing our curricula, texts, techniques, evaluation procedures, and teaching qualifications.

Being good parents counted not at all. But we had an advantage over many would-be home schoolers. I was a public-school teacher and chairman of the local school board; my wife had also taught public school. We knew the proper educational jargon and the expected way to map out a curriculum. Our teaching experience also gave us credibility. Six weeks later, we received approval from the State Department of Education.

Unlike some home-schooling parents, we have no great antagonism toward the public-school system. (Our older son, who is more social and athletic and less academic than Jason, still attends public high school.) But we realize its limitations. A public school cannot duplicate the one-to-one student-teacher ratio or the flexibility we incorporate in our home-study program.

We design a curriculum specifically for Jason. He can work on math at a sixth-grade level while reading books at the tenth-grade level. Once he chooses a history topic, we integrate the literature, art, music, and science of that time period. When he studied American history last year, he read the novel *Johnny Tremain*, which reflects the spirit of the Revolution, and *Cowboys of the Wild West*, a nonfiction book set about the time of the Civil War. We checked out art books from the library to look at paintings of each period. With other home-schooling families, we took a field trip to Boston to see the *USS Constitution* and nearby Plymouth Plantation.

Jason spends as long as he wants or needs on a concept. If he takes 15 minutes to master multiplying fractions, he doesn't then spend another 30 minutes doing unnecessary repetitions to fill up the 45-minute math block. Last year, we spent extra time on grammar because Jason had scored relatively low in it on standardized tests; his scores improved significantly. We do set general goals for the year but allow great flexibility in daily activities. On that first warm day of spring we can venture outside, walk through the budding greenery, and feel happy to be living in Vermont.

We also have more time and flexibility for family activities. We can attend plays during the day, drive the 50 miles to Montpelier to watch the state legislature in session, go skiing, or just sit around and talk while everyone feels relaxed and refreshed. In the evenings, we play games together, read, listen to the radio, or discuss the news.

Jason also has time to spend on his personal projects. He can now take piano lessons in the morning, and he learns much faster than before. He can sit in front of the wood stove and read for three or four hours; he can design and build a treehouse; he can compose music at the piano or on the computer.

Occasionally we have our bad days and forget patience and understanding. We'll threaten to send Jason back to school unless he stops fidgeting and gets down to business. Luckily, we usually know enough on those days to either stop early or move on to a different subject.

Looking back at the last three years, we feel a sense of reward and accomplishment tinged with uncertainty. Our son has become more responsible for his own education. Jason has learned much that is not in a regular school curriculum because his curiosity has been encouraged. At age eight he was wondering about the Big Bang Theory and was debating evolution versus creationism with a friend. An avid reader, he often bargains to stay up a few more minutes at

night because "there are only seven pages left in the chapter." In spite of all the positive signs, we still wonder what kind of person our son will grow up to be. Did we make the best decision?

We have chosen to teach Jason at home for positive reasons—the individualized program, the integrated curricula, the discovery-oriented learning process, and the improved family life. But some undercurrents of misunderstanding and even suspicion still linger in the community. Often, while we are out shopping during the day, a clerk will look at us quizzically and ask if it is a holiday. Jason will explain that he is a home schooler. Sometimes I think that people then assume that he must have some disability that makes him unable to attend school.

Some people are appalled that we are depriving Jason of a chance to be with kids his own age. We point out that he has many opportunities to socialize—in Cub Scouts, during Pee Wee baseball, and with friends after school. Every week, Jason and three nearby home schoolers get together for a writing class at our house. Every other week, they attend art class in a neighboring town. They also participate in a ski program at a local ski area.

Most people have been supportive, however. Despite our decision to take Jason out of school, the voters reelected me to the school board. Our young school superintendent sees home schooling as a testing ground for techniques that he might adapt to the classroom. Each year, he has let Jason take standardized tests without charge along with the rest of his grade, thus giving us a useful way to make sure he's keeping up.

In the near future, we anticipate one crisis—sports. Jason enjoys athletics and wants to play high-school soccer. He'll be eligible next year, when he reaches the eighth grade. Yet this extracurricular activity will probably remain unavailable to him because to play on a school team, you have to be in school.

My wife and I have also had to make sacrifices. We pay about $200 a year for books and materials, and publishers charge us 20 percent to 25 percent more for textbooks than schools have to pay. We spend our spare time to prepare materials, research new topics, and go on field trips. Since one of us must be home every day to supervise, we are a single career family. I have remained in public education, teaching high school and now also evening classes at the local community college. My wife raises sheep, gardens, and makes maple syrup.

Our biggest obstacle has been the State Department of Education, which closely monitors the estimated 200 Vermont home-schooling students. Although the law states only that we must provide an "equivalent" education, overzealous administrators, protecting the "compelling interests" of the state, have greatly increased the scope of their oversight activities through administrative fiat. Each year the application form has become more intrusive.

Until this year. When the education department came out with yet another expanded form, about 25 home-schooling families decided to take political action. To combat this bureaucratic red tape, we formed the Vermont Home Schoolers' Association. Working with a sympathetic state legislator, we wrote a bill that would have loosened restrictions on home schooling. To everyone's surprise, the bill passed easily in the state House.

Things got nastier in the Senate, as representatives of public education realized that the bill might actually pass. At a Senate legislative hearing, I spoke positively of our experiences and argued that home schooling is a valuable alternative. But the president of the Vermont Education Association (the teachers' union) and a spokesperson for the Department of Education made it appear that Vermont home schoolers are planning the destruction of public education. They implied that only the state should be responsible for a child's education.

But the education hierarchy got our message. To stave off future rebellions, the education department produced a very short new form for families already running approved home-schooling programs. And the department now asks our association for feedback before it changes any home-school regulations.

Jason's "New Year's Revolution" has been a revolution for our whole family. By becoming home schoolers, we have chosen to act rather than react; to correct what is not working immediately rather than wait for changes to filter into the classroom. We are also growing more radical. Before, it was easy to accept the decrees of the educational establishment. Now we question what right the state has to restrict our choice of education for our child. As parents, we seek the best for our child. That is why we are home shoolers. ◻

Michael Kolesnik is a teacher in Vergennes, Vermont.

by **Bill Kauffman**

Mr. Marrou Goes to Juneau

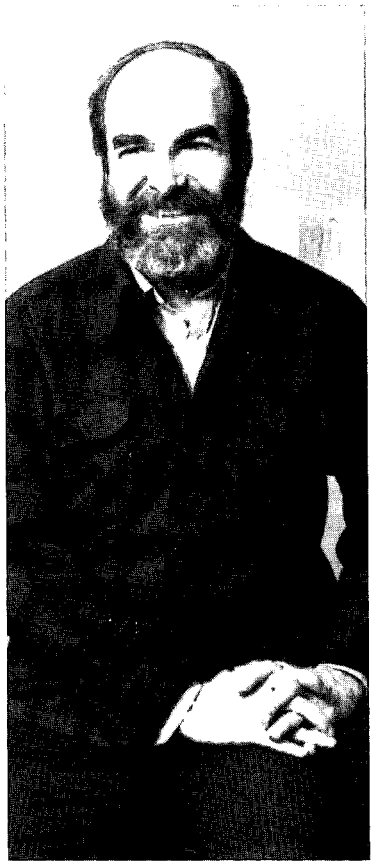
What can a Libertarian do if elected to office? He can at least become "the conscience of the legislature."

At 8:00 A.M., Representative Andre Marrou of the Alaska House of Representatives kisses his wife, Eileen, good-bye and skips down three flights of stairs at Juneau's Driftwood Lodge, gingerly stepping over a squashed banana and an empty bottle of beer. It's a five-minute walk to work, usually in the damp, gray weather for which Juneau, Alaska, is infamous.

The bearded Marrou, who looks like a cheerful Lenin, studies the day's legislative agenda from his sixth-floor office in the Court Building, overlooking downtown Juneau and the Gastineau Channel. At about 10 minutes to 10, he trots across the street to the grim confines of the Alaska State Capitol (design: mid-century junior high school).

Wearing the standard legislative tweed jacket and tie, the 47-year-old Marrou looks much like the 39 other representatives converging on the House floor for today's 10:00 session. Except for his two lapel pins: an American eagle on the right chest, and on the left a skull, scarved in a red bandana, boasting the Hell's Angels motto "Ride Hard, Die Free."

As Marrou strides down the corridor leading to the House chamber, Finance Committee Chairman Al Adams throws him a mock-Nazi salute, bellowing "Liberty, Freedom!" Marrou ignores Adams, an Eskimo who is perhaps the most powerful man in the House, and takes his seat at the last desk in the last row, just in front of the table occupied by the press corps. (The location has its advantages—easy access to both the Fourth Estate and the bathroom.) A yellow Post-it note is stuck to Marrou's desk. It's his credo, scrawled in a particularly frustrating moment. It reads: "Statism Rules—But Liberty Should."



Marrou recites the morning Pledge of Allegiance loudly and with evident conviction. His eyes dart once or twice to liberal Democrat Peter Goll, who enrages some representatives by allegedly (ah, libel laws) refusing to salute the flag. A nervous, thin-lipped young man who could pass for a yuppie Frank Burns, Goll has a whiny voice, stirs coffee with his pinky finger, and is "the kind of guy people automatically hate," as one staffer puts it.

The legislature disposes of its routine business and takes up a bill to create a $1-billion Alaska Research Development Endowment, a bureaucracy whose purpose will be to subsidize natural-resources research and "unlock knowledge," in the words of Al Adams.

Marrou rises and is recognized to speak. (Which may be the most common occurrence in Juneau. "He's occupied more floor time than half these guys put together," marvels Democratic elder statesman Red Boucher.) Adams's plan to "unlock knowledge" is his target.

"Who says knowledge is locked up?" roars Marrou, heedless of his wife's plea earlier that morning to "talk a little quieter." He continues: "Is it in a chest somewhere, with a padlock? All we gotta do is just leave people alone and they'll do just jim-dandy. That's been the history of the world....This bill appalls me. It's the worst bill we've had come before us. The vote should be 40-0 against."

The two members of the capital press corps present are smiling as Marrou sits down. It may be the speech (they know the bill will not be defeated 40-0), or it may be a drawing Marrou passed back minutes before, while an "art in public places" bill was being debated. It's a sketch of a screw driving into an IRS logo. "Screw the IRS," the rendering is titled, "Art by A.V. Marrou, Alaskan Artist." One reporter scribbles back, "What does the V stand for?" Without missing a beat, Marrou jots his answer. "Vicious."

The Speaker of the House wishes to close the debate and vote on the measure, but Marrou is up one more time. "Cooperation between state and industry," he says, his voice dropping, "is exactly how Nazi Germany operated." The Speaker is staring back at him, head resting on his chin, seemingly bored by Marrou's disquisition on fascist economics. The vote is taken. Twenty-three in favor, 14 against. The measure passes. Marrou, at least, has improved on yesterday's showing, when he wound up on the losing end of 34-6, 33-6, 29-10, 32-6, 32-8, and 29-9 decisions.

When the papers report on Andre Marrou's speeches the next day, they'll designate him "L-Homer." It's jarring to non-Alaskans the first time they see it. For Marrou is neither Democrat nor Republican—he is a Libertarian. In fact, he is presently the only state legislator in the country from the Libertarian Party.

Like 80 percent of all adult Alaskans, Andre Marrou was born somewhere else. Southwest Texas, that is, which he left at age 17 to study chemical engineering at the Massachusetts Institute of Technology. He stayed in Boston for 17 years, until "in 1973 I came to Alaska with all my worldly possessions."

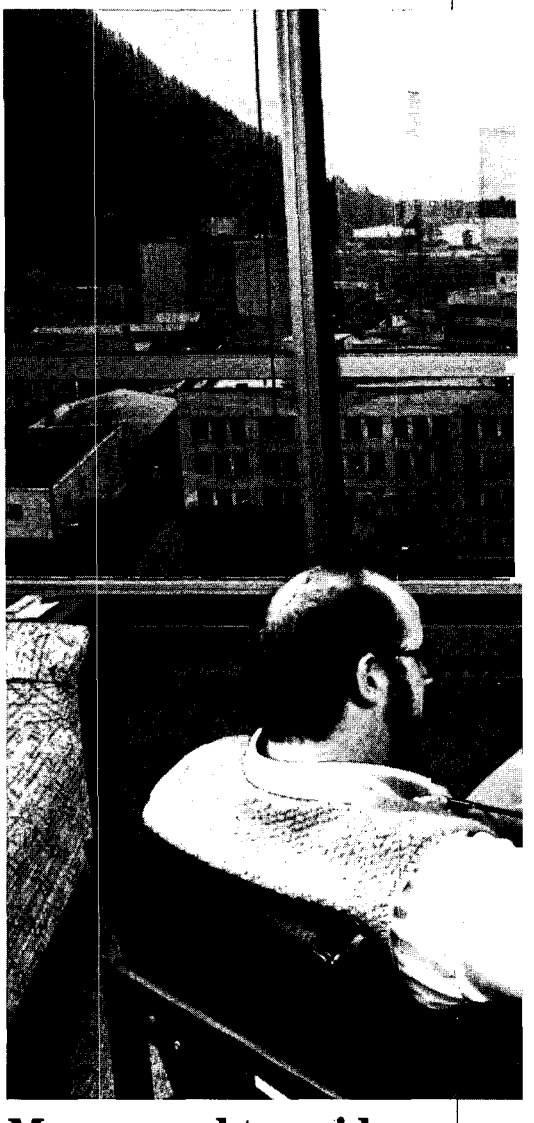
Marrou settled in Anchorage, a city of 250,000 that contains half the state's population (and is scornfully referred to as "Los Anchorage"by urbanophobe pioneer-types). He became a jack-of-all-trades, working as a cordwood salesman, disc jockey, and technical advisor on the Alaskan pipeline, before leaving the city and spending two years with his new wife, Eileen, in the woods. For those two years the Marrous lived what Alaskans call the subsistence life, chopping wood and picking berries in the solitude of Perl Island and Bear Cove.

The Marrouvian odyssey ended in Homer, a town of 2,500 located 200 miles down the road from Anchorage, at the tip of the Kenai peninsula. Actually, Homer is down the road from *every* city in the continental United State—it is the final stop in America's contiguous highway system. As Joe McGinniss described it in his fine "I survived Alaska" book, *Going to Extremes*: "If you got in your car in New York City and started to drive, Homer would be as far as you could go."

While living in Anchorage, Marrou discovered the fledgling Libertarian Party when a woman handed him a party brochure at a Small Business Administration seminar. "About two weeks later I read it," Marrou recalls, "and I was dumbfounded that this was *exactly* what I believed in." What he and the Libertarian Party believe is encapsulated in the Jeffersonian maxim that "that government is best which governs least." In practice, that translates into support for unfettered free enterprise and individual rights and opposition to government grants of favor and privilege.

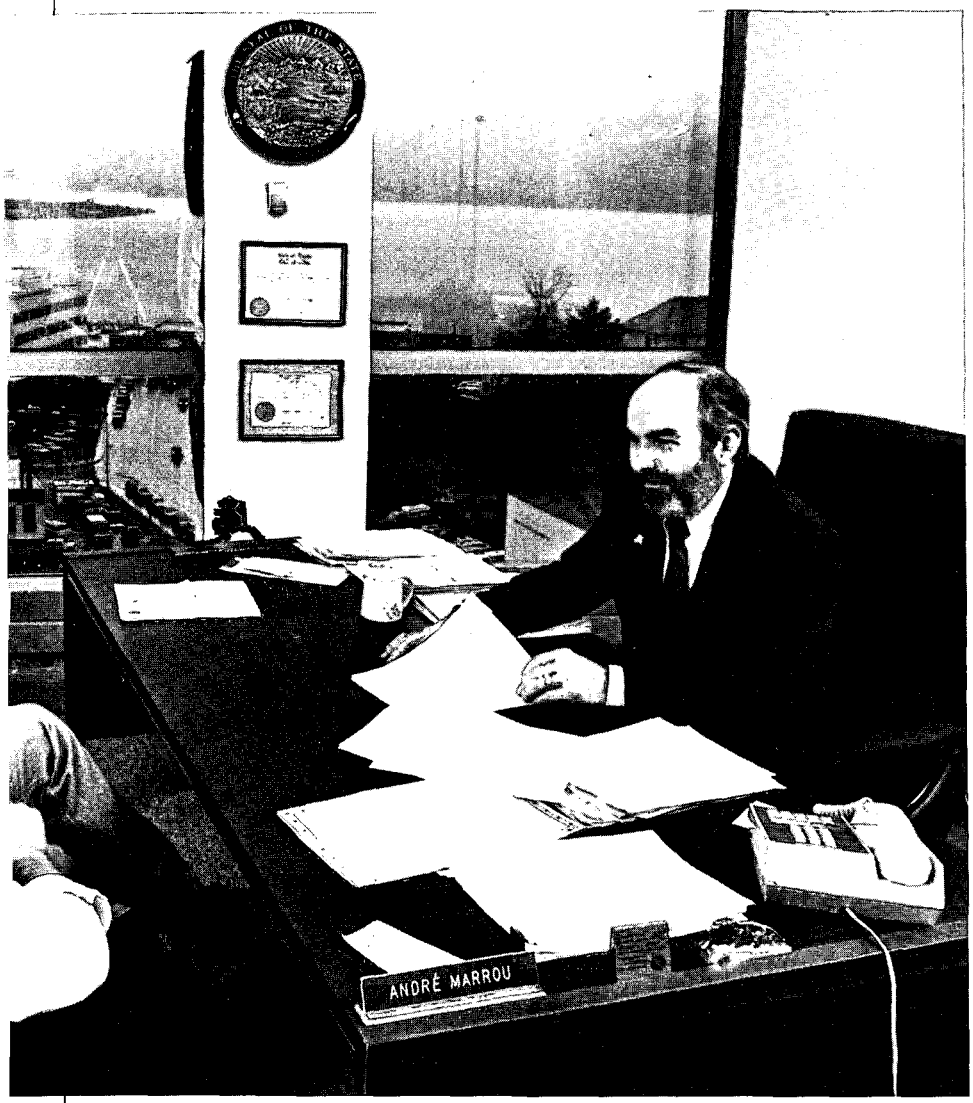
Marrou soon became disenchanted with the Libertarians' incessant quibbling over fine points of doctrine—"there was a lot of philosophical debate going on and there was no attempt to bring people into the party." In his disgust, he and his wife fled into the woods, away from people and politics and everything else. Rustic reflection begat a new resolve. "I did a lot of thinking while chopping wood," remembers Marrou, "and I decided that I was not going to roll over and allow the establishment to run over me. I was going to do what I could to help the cause of liberty." Thus inspired, he and Eileen emerged from the woods and set their sights on entering the belly of the beast.

Marrou ran for the Alaska legislature in 1982, coming in second in a field of three. In 1984, he ran again, beat the incumbent by 56 votes out of some 11,000 cast, and set out for the old mining town of Juneau.



Marrou and top aide Jack Sanderson plot strategy in their room with a view.

Juneau is a politician's dream. Located in southeastern Alaska, in the chain of islands and inlets known as the Inside Passage, the city is inaccessible by road. Visitors arrive by ferry or by plane, the latter mode requiring a tricky descent through cloud-enshrouded mountains. (Travelers who are even a wee bit chary of flight are advised to booze it up



PHOTOGRAPH BY MARK KELLEY

well before landing.)

The preponderance of Alaska's population (read: constituents) is thus several hundred miles away from a capital that can't be approached except by the most expensive forms of transportation. No need, then, as a politician, to worry that the hoi polloi might take an undue interest in your actions.

Once a legislator gets to Juneau, he finds himself "isolated and surrounded by bureaucrats," in Marrou's words. Forty percent of the workforce of this city of 25,000 labor for some level of government, and the town's picturesque setting is sullied by a rash of ugly government buildings housing state agencies that perform functions you don't even want to think about. To keep his sanity in this sanctum of statism, the good Jeffersonian at least has recourse to a variety of fine drinking establishments: Bullwinkles ("For a Good Time in the Old Town Tonight"), Lucky Lady ("Juneau's Famous Irish Pub"), Red Dog Saloon ("Work Is the Curse of the Drinking Class"), etc., etc.

There is considerable sentiment in Alaska to move the capital from Juneau to Willow, a tiny town north of Anchorage. Voters approved the move in a referendum several years ago, but funds for the move have never been appropriated. One fear is that the politicians would squander millions of dollars turning Willow into an arctic Brasilia, complete with lavishly appointed quarters for state officials and civil servants. Marrou, an ardent supporter of the move, envisions the capital of Willow as such: "You put up one quonset hut for the Senate, one quonset hut for the House, and one quonset hut for the governor, and that's the capital." Not that he's unwilling to compromise with legislators who have more-regal tastes—"You could give it a city name, if you like," he concedes.

But the "isolated little island of socialism" Marrou so despises is a political anomaly in Alaska. Voters in the rest of the state exhibit the healthy hostility to government one would expect from settlers on the final frontier. Hell, there's even a secession movement, Joe Vogler's Alaskan Independence Party, that advocates breaking away from the USA and declaring Alaska an independent country. ("It's a great idea that won't work," opines Marrou, noting that the matter was settled in 1861.)

The Libertarian Party has found Alaska far more hospitable to its message than any state in the Lower 48. Two Libertarians, Dick Randolph and Ken Fanning, preceded Marrou in the legislature, and 1980 Libertarian presidential candidate Ed Clark carried 12 percent of Alaska's vote, including all 29 votes cast in the town of Chicken. Randolph's spirited 1982 race for governor attracted 15 percent of the vote and inspired the Republican National Committee to broadcast anti-Libertarian radio ads around the state. This November, Marrou is up for reelection, running on a statewide slate with seven other Libertarians.

What explains the success of the anti-government movement in Alaska? Marrou avers: "Alaskans generally came up here to get away from whatever they didn't like in the Lower 48. By and large, when you ask them it turns out they didn't like the oppressiveness of government in the Lower 48, so they came up here to get more *freedom*." He continues: "Things go fine for a year or two, until it finally dawns on them that Alaska is a very socialist state."

He's not exaggerating. In Alaska the "government owns almost everything," Milton Friedman has written, including the land. The percentage of Alaskan land that is in private ownership (under 5 percent) is less than the percentage of land devoted to private plots in the Soviet Union. Widespread resentment against the federal and state landlords has handed the Libertarians, who propose to allow individuals to homestead the land, a golden populist issue. Which they've exploited with some success: a Libertarian-sponsored "Tundra Rebellion" initiative, which instructed the state government to seize federally owned land as a first step toward privatization, passed overwhelmingly in 1982. (The initiative was subsequently ruled unconstitutional by the state attorney general.)

Complementing the virtual state monopoly on land is the embarrassment of riches that has flowed into state coffers since the discovery of oil 15 years ago at Prudhoe Bay, on state-owned land on the Arctic coast. Oil revenues account for over 85 percent of Alaska's budget, which has mushroomed from $100 million in pre-oil days to more than $3 billion today. "With $3 billion," sputters Marrou, "we oughta have our own navy, our own air force, and our own marine corps." Instead, they have an army of well-paid bureaucrats—50,000

state and local government workers whose average salary exceeds $32,000. The recent decline in oil prices may act as an oleaginous Gramm-Rudman, forcing cuts in state spending, but then again it may not. Democratic Governor Bill Sheffield and the usual cast of progressive thinkers are cautiously suggesting the restoration of a statewide personal income tax, which was repealed in 1979 after a tireless campaign by former Libertarian Representative Randolph.

"What the hell did they do for a conscience when there was no Libertarian here?"

There are no grizzled prospectors in the Alaska House of Representatives. Nor are there chair-tossing brawls; disputes are settled by the electronic tally board. No one carries a gun or drinks whiskey in the chamber, and the debate is no more raucous than a Young Republicans' Parcheesi party. There are fewer lawyers (6 of 40) than in most legislatures, and more beards (10 of 40), but the Peter Golls far outnumber the Clint Eastwoods.

When the newly elected Marrou arrived in Juneau in January 1985, the first thing he did was meet with Speaker of the House Ben Grussendorf, a Sitka Democrat. "He said there were two things that he expected of me," remembers Marrou. "He said that he expected me to be the conscience of the legislature, and he expected me to generate a lot of ideas."

Marrou assured Grussendorf that he'd generate ideas, and he has—he introduced 75 bills in his first term, more than double the second most prolific legislator. But Grussendorf's other request took him aback. "The fact that the Speaker expected me to be the conscience of the legislature really stunned me. It brings up the next logical question: What the hell did they do for a conscience when there was no Libertarian there?"

Ask Marrou about the fortitude and character of his Housemates and he's off to the races. Other representatives have "come up to me and congratulated me and said things like, 'Andre, that was a great speech, I feel the same way, we've been needing someone to say that for years.' My answer is, 'Well, gee, you can do it too. I don't have to be the only hero around here. You can get up and say what you believe in.' But they're just afraid. Why they're afraid to stand up for what they believe I don't know. They're so afraid that sometimes they'll send me notes asking me to talk on various subjects for them, which I'm willing to do if it's pro-individual liberty and anti-government. But it astounds me that they're afraid to get up and talk for what they believe in."

No one has accused Marrou of being reticent. His practice of speaking on virtually every bill that restricts freedom or expands government has drawn mixed reviews. "He's a great speaker," allows *Anchorage Times* newsman James Wasserman. Another veteran capital correspondent is less kind: "I've had guys tell me that after a while they start to tune him out....He makes some good points but they think he should be more selective."

Marrou has heard the criticism but shrugs it off. "I try not to talk on every bill," he says, "but they put up such garbage that I feel it's incumbent on me to do what I can to protect individual liberties by telling people what a ridiculous bill it is."

Other representatives have a far higher tolerance for absurdity. When Marrou dismissed a measure that would extend the life of a state board that regulates barbers, hairdressers, and cosmetologists as "another of those silly bills that shouldn't even see the light of day," Rep. Robin Taylor, a Wrangell Republican who sits at the desk in front of Marrou, rose to offer a persuasive dissent. "There are diseases in other states," Taylor pointed out, "that we haven't even heard of up here because we have licensed barbers." Taylor's argument carried and his side won; Alaska was saved from the unspeakable horror of unlicensed cosmetologists.

None of the 75 bills Marrou has introduced have become law. Two—a measure to deregulate concert promoters and a bill extending "good Samaritan" liability exemption to emergency medical technicians—passed the House and died in the Senate. His other 73 bills range the antistatist gamut, from repealing motor-fuels taxes to transferring state lands to homesteaders to repealing a legislative pay raise.

As a minority of one, Marrou understands that he's no power broker. Rather, he acts as a sort of Ghost of America's Past, descending on the chamber each day to remind Alaska's legislators that the sentiments expressed in the Declaration of Independence have not been extirpated from this land, despite the best efforts of our governing class. He jokes and kids with his colleagues during recesses, but Marrou's passionate speeches sometimes have the quality of a jeremiad. "He's the conscience of the legislature," says Minority Leader Terry Martin with a smile. "He gets up there and says things we don't want to hear. Plays on our consciences, just like a priest. But this isn't church."

Nor is Marrou a miracle worker. But his influence seems to work in mysterious ways, as Minority Leader Martin recently found out when he asked the Minority Caucus (11 Republicans and Marrou) to endorse a bill recriminalizing marijuana. (Alaskans may legally grow and own up to 4 ounces of the killer weed.)

When Martin brought the bill up, recalls Marrou, "I thought, 'Oh boy, here's where we separate the goats from the sheep. I'm going to be the only one out on this.' In fact, if failed. Out of 12 members, he got only 5 votes." That's right—a *majority* of conservative Republicans in the Alaska House of Representatives support legalized dope.

In part, one suspects, because an eloquent voice for liberty haunts the chamber.

Marrou is having lunch at the Capitol Cafe with Walt Furnace, an Anchorage Republican who is perhaps Marrou's closest friend and ally in the House. Furnace is a burly, amiable black man, a Texas native who came to Alaska in 1963 with the Air Force and never left. Between bites of his liver-and-onions, Furnace discusses his colleagues' profiles in cowardice.

"Some of these guys have prostituted themselves so many times..." he shakes his head, voice trailing off. "Man, you *gotta* vote your conscience."

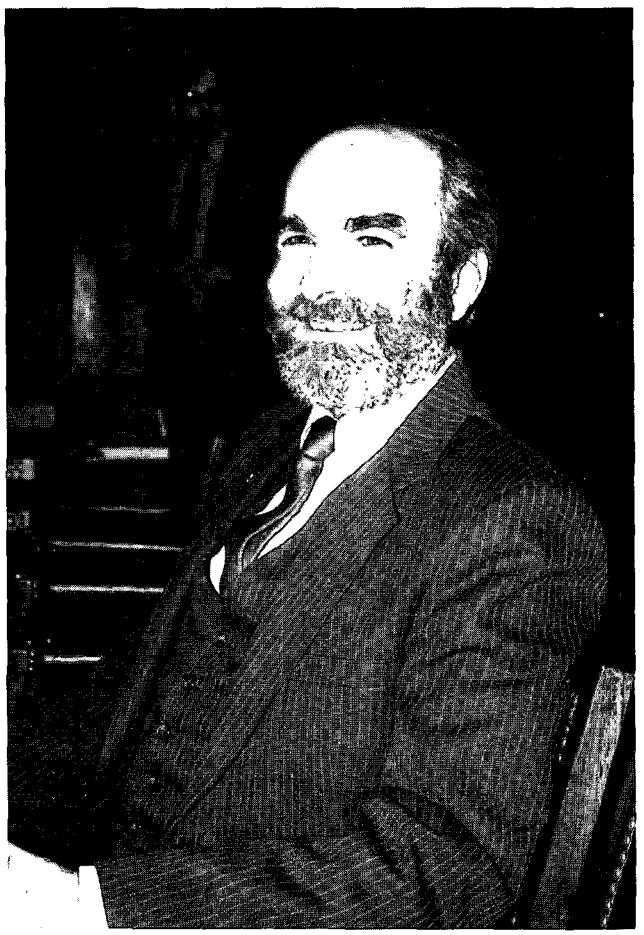
Much to Furnace's consternation, the whoredom is bipartisan. "The problem with Republicans," he says in a near-whisper, "is they don't have the *guts*" to vote against pro-government bills. "Most of the stuff we pass here," he leans back, chuckling, "the world wouldn't end tomorrow if we didn't pass 'em. There's just too many laws."

Marrou excuses himself from the table. Furnace is asked what his colleagues think of Marrou. He smiles, and offers the by-now standard refrain: "He's the conscience of the legislature—and people don't like that."

No, they don't. But watching Marrou wage his lonely battle for liberty, one can't help but admire him. Day after day, he defends the ideals of 1776 in the best way he knows how. He rises to speak on almost every bill, even though many of his colleagues wish he would just shut up. He loses almost every vote. He's involved in a tough race for re-election against opponents who attack him as "ineffective."

To the paternalists and the often venal, unprincipled types who dominate politics, he is the Randall "Tex" Cobb of Alaska, a fighter who hasn't a chance but refuses to hit the canvas so long as he has a breath to draw. But to the men who founded this country—the Patrick Henrys and Thomas Jeffersons and Samuel Adamses and the other patriots who valued freedom over power and the individual over the state—Andre Marrou would be as familiar and as welcome as the sunrise. He is a modern true Son of Liberty; that such a man is an oddity speaks volumes about the state of our union.

A solitary voice for liberty haunts the chamber: is the chamber listening?



The House turns to consideration of "ice classics" legislation. Ice classics is a form of gambling wherein one purchases a chance to predict the exact moment that the ice breaks on several Alaskan rivers. The most popular such game, the Nenana Ice Classic, annually awards more than $100,000 to the winner.

Marrou is on his feet again, offering an amendment to the ice classics bill. This time his amendment, and speech, is scrupulously nonideological. He is proposing to allow the Kenai Chamber of Commerce to hold a "goose classic," in which bettors may predict the return of various types of geese to the area.

An amendment of this sort would pass most legislatures without much fuss. But most legislatures haven't consciences, men who stubbornly refuse to compromise and who insist on calling socialism, and authoritarianism, and statism, by their proper names.

The Speaker asks the members to cast their votes. The light next to Marrou's name flashes green, as does Furnace's and a batch of others, mostly Republican. An equal number of lights flash red. The vote is 18 in favor, 19 opposed. The renegade has got his comeuppance.

But then...preppette Drue Pearce, the glamorous Anchorage Republican, stands and is recognized. She asks that her vote be changed from no to yes. *Peripeteia*! Now Marrou has won, 19-18. Scattered applause breaks out in the chamber. Representatives wheel around on their swivel chairs, laughing, saluting. Red Boucher shouts, "Goose Marrou!" and everyone laughs some more. Marrou, beaming, passes a note back to the press table. "See. We *Can* Win."

The spring legislative session drones on into its last week. Legislators and staff are busy with moving plans, subletting apartments, and getting drunk at the Elks Club. The day before the first tourist boat of the season sails into the Gastineau Channel, Andre and Eileen Marrou will take the ferry up to Skagway, then drive home the scenic route, through Yukon Territory towns like Whitehorse and Dawson. Two weeks later they'll reach the end of the line, the dead end to end all dead ends, home sweet home, Homer. ◧

Assistant Editor Bill Kauffman, Washington-based, gets to Alaska on occasion.

Fifty-eight thousand brothers and friends and fathers died in Vietnam. I don't want my son sent to some far-off war 15 years from now against his will.

Duty, Honor, Country —But No Draft

by **Greg Todd**

Like the weeds in my garden each summer, calls to resume conscription are perennial and pervasive. Cultivated by long-time draft supporters and by new proponents of national service, support for some form of compelled service can be found across much of the political landscape. The sentiment seems at home in the mid-1980s, a part of the repudiation of the post-Vietnam syndrome. But it's a wrong-headed sentiment, the product of narrow, alien thinking.

While policymakers must fashion adequate military forces, they must not ignore personal, individual freedom. How, I wonder, can people with a professed interest in preserving the Constitution, people who care about American liberty, so disregard the freedom of the individual? How can they feel empowered to claim the lives of our sons in service to the state?

For many of us, the issue of conscription in 1986 cannot be considered in isolation from its practice during the Vietnam war. For those of us who came of age in the Vietnam era and were threatened by the draft, or those who had brothers, fathers, or sons "selected" and sent to war, the issues of the draft and Vietnam are inextricable. Indeed, reconsideration of the latter may be driving reconsideration of the former. The war is thought of these days by some as a noble cause. Columnist Richard Cohen does well to warn us, however, "More dangerous by far than the post-Vietnam syndrome is the pre-Vietnam syndrome, in which dash and valor and Green Berets were supposed to solve problems politicians could not."

Most of the men of my generation avoided or evaded the draft during the Vietnam war, as I did. My case was not dramatic. A student deferment shielded me until I graduated from college, at which time the draft call in my locality stopped two numbers short of my own. I only got as far as the physical examination, and by then a regimen of beer, popcorn, and exercise had ensured that my skinny body wasn't what the Selective Service coveted.

Some of my contemporaries who ducked the draft now argue in favor of reintroducing it. In the current era of more-monochromatic patriotism, they've changed their minds; in today's light they see a draft as somehow egalitarian and ennobling. As if to prove their repatriation, they swear now that conscription is a good thing; now that they have

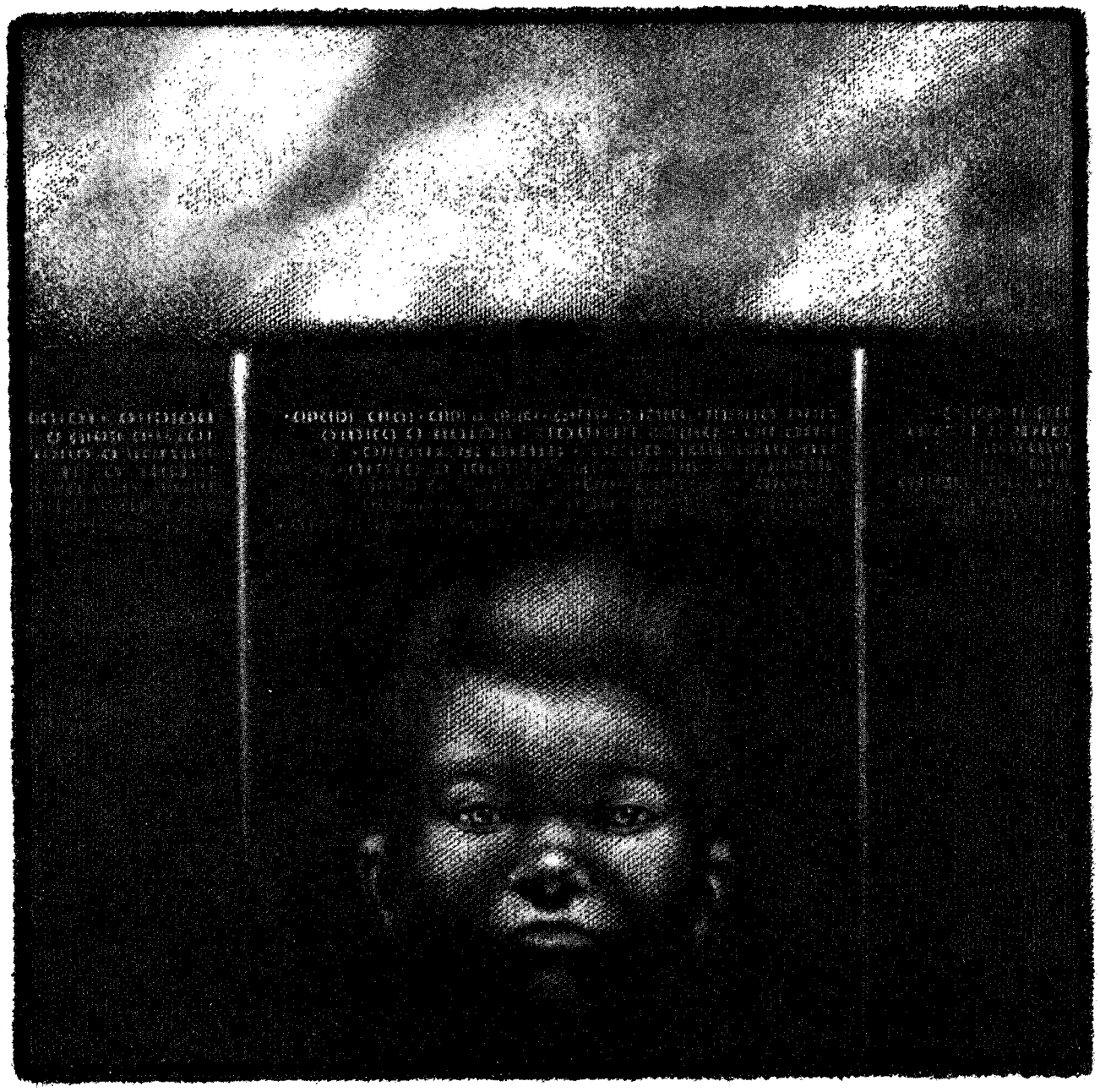


ILLUSTRATION BY DAVID TILLINGHAST

passed their 35th birthday and wouldn't be liable themselves, they think all young men should be drafted.

That's probably a low blow. Catharsis is a personal thing, and opinions do change. People do grow, sometimes wiser. For me, 12 years working for the Army has been assuaging. But to support the draft is carrying things too far.

Any man who evaded the draft during the Vietnam war probably felt some guilt. It wasn't the patriot's thing to do. In the vernacular of a later era, real men don't dodge the draft. Our fathers had answered the call during World War II, and now it was our turn.

But things were different in 1970. Vietnam *wasn't* World War II. Our government was prosecuting a war that we believed was unjustified. Did we have the right to make that judgment? Did we owe our country the benefit of any doubt? Did we owe our country obedience? The questions of the day were not easily answered, and some important distinctions have been lost in time's passage.

Hindsight is not 20/20; it can provide a clear but incomplete, and therefore misleading, picture. The story of US involvement in Vietnam wasn't simply one of black hats and white hats; it wasn't simply a story of a noble cause. And in the telling today, a real tragedy is too often obscured. Fifty-eight thousand American soldiers were killed. Fifty-eight thousand vital young men. Fifty-eight thousand brothers and friends and fathers.

Fifty-eight thousand sons. And still no one gives a good reason why.

Add to that 2,400 American POWs and MIAs still unaccounted for and 300,000 US soldiers wounded, and add, too, countless draftees whose lives were altered by the government's claim of two years. The entire toll can't even be known.

Those years tore at our commonality. Some who opposed American involvement in the war treated American soldiers with disdain and disrespect. The soldiers deserved better; they had made a courageous choice in answering their government's call. But most of the people I knew who opposed the war never intended disrespect for any American military man. Opposition to the war was too readily construed as opposition to our military, and support for the military too readily became support for the war. We loved our sons and brothers, our soldiers; we hated seeing them die. We hated the war, a policy that seemed shamefully senseless, then and now, not noble. The distinction between soldier and policy was there, and clear, though too often unseen.

My respect for the military, kept even in that divisive time, comes mostly from my family. My dad served in World War II, my father-in-law in the Korean War. One brother was in the Air Force for more than 20 years; he volunteered for Vietnam but was sent to Korea instead—now he feels that he missed "his war." My other brother was drafted and sent to Vietnam early on, in 1964-65. He was a better man for having been a soldier. He may have been better off had he chosen to make soldiering his life's work. He came home whole, at least outwardly, but his life had been interrupted, irreparably changed.

I wonder now about his time in Vietnam. I wonder what it did to him to come back to a "so what?" attitude. He eventually found a job in a wire plant, and a wife. He never talked to me much about Vietnam. He took his own life in 1971, and I've never learned to deal fully and peaceably with that. I blamed the Vietnam intrusion in his life, the draft, in large part. I still do.

A kid I had gone to high school with bummed a cigarette from me at the swimming pool one perfect August day; he was killed in action in Vietnam a few weeks later. I went to the funeral home and looked at his body in the coffin. I looked at the medals on his chest and wondered how much of the flesh beneath had been blown away. I shook his mother's hand and mumbled condolences. I remember the tears in her younger son's eyes.

I had a friend who went to Vietnam when I was a sophomore in college, before I joined the protest against the war. He sent me letters from the war zone and laughed about swimming in bomb craters. I wrote back about things that seemed inconsequential. We were close friends. After I graduated he was a local recruiting sergeant. He probably didn't know that I had written against the war and the draft. He came to see me. He came to my house and offered to sign me up. That visit ended awkwardly. That was 13 years ago. That was the last time I saw him. I think of him from time to time. I wonder if he knows I respected him then and now. I wonder if we're still friends.

"Look into my son's eyes; see how clear they are, how unbelligerent, how vulnerable. His life is worth more to me than all your logic."

Just about every young man could tell such stories, from one side of the war or the other. The soldiers, of course, tell grimmer ones. The point is, the war touched all our lives, and in turn the welling of public sentiment eventually stopped US involvement in the war.

Critics of that course point to the denouement in Vietnam after the United States pulled out, to Ho Chi Minh City, to carnage in Cambodia. Few of us would defend the North Vietnamese, nor did we then. But of those critics I would ask, How many more American lives were you willing to sacrifice for the government of South Vietnam? Those who argue for a draft today should answer that.

Public sentiment had a role in ending the draft as well. The popular opposition to the war spread to include the draft. It was a policy both arbitrary and tragic. People tired of their sons being taken. People equated the supply of conscripts with the prolonging of American involvement in the war.

Proponents of a new draft say that this time the inequities of the old draft will be avoided, that a new draft will unite us, not divide us class by class. Proponents say that their new draft will be equitable. It will not. Any draft will be inequitable to those forced to serve. The luck of the draw is a poor reason to send an American kid to die in the jungle, or even to disrupt his life for two years against his will.

Some draft proponents counter that we can avoid the problems of a selective draft by compelling *all* youth to serve in a universal service program. Such a system, they say, would provide benefits greater than its costs. But even if that were so, it is utterly inconsistent with the tenets of our society. It's true that the courts don't necessarily agree with that—they've routinely decreed hands-off when it comes to regulating Congress's responsibility to raise an army. But it's equally true that compulsory service is involuntary servitude every bit as much as slavery. Indeed, it is perhaps more odious *because* it emanates from the state.

As Nobel laureate Milton Friedman has argued, "We need a strong military....But strength depends on spirit and not merely numbers. Our military will be far stronger if we recruit it by methods consistent with the basic values of a free society than if we resort to the methods of a totalitarian society."

And we should not forget Daniel Webster's eloquent words to the House of Representatives in 1814, words no less wise today: "Where is it written in the Constitution, in what article or section is it contained, that you may take children from their parents, and parents from their children, and compel them to fight the battles of any war in which the folly or the wickedness of Government may engage it?"

It seems an odd time to even discuss the draft. It's peacetime—"morning in America"—and our populace has generally opposed a peacetime draft, though some opinion polls have shown support for the idea of universal national service. Shortly after the 1984 election, Midge Decter, a neoconservative who heads the Committee for the Free World and who supports conscription, told the editors of the *Washington Times*, "I think that, without the slightest bit of real turmoil, there could be a draft in this country right now." But as the newspaper asked in editorial response, "Why is it that some champions of the free society entertain wistful notions of a peacetime draft?" The editorial pointed out that "any serious diagnosis of the turmoil of the late 1960s would fault conscription, which leveled enormous economic, social, and spiritual costs on a generation." The all-volunteer force, the *Times* noted, has been a success—given

legislative support in providing better pay and educational benefits, the services have been able to attract quality volunteers.

Indeed, our uniformed and civilian military chiefs justifiably point with pride to recent recruiting successes scored even as the economy was shaking its recession doldrums. Employment is up, unemployment down, and our armed services are still filling their recruiting goals completely, and with a higher proportion of high-school graduates than even the draft of the 1960s provided. Enlistment targets are being exceeded, retention is up, and quality indicators are the highest they've ever been.

General John Wickham, the Army chief of staff, and Lawrence Korb, formerly the assistant secretary of defense for force management and personnel, are among those who publicly support the volunteer military. They see the costs and inefficiencies a draft would entail, and perhaps more to the point, they see the success of the volunteer system.

So does military correspondent Drew Middleton, who wrote this appraisal in the *New York Times*: "Armies are no better than the people who serve in them. The first thing that strikes anyone who remembers the discontented, disheartened Army of the early '70s is the cheerfulness, the enterprise and the vigor of today's soldiers and officers. The volunteer Army lacks the overall manpower of the draft army. But the country has gained in the caliber and enthusiasm of the men and women who now serve....[A] professional Army has developed that is probably the finest the country has ever had."

Some critics contend that the increasing number of women in the ranks is diminishing our military strength and argue for a draft of young men on that basis. In fact, women constitute only about 9.5 percent of our forces. Moreover, women are still excluded from primary combatant roles; and in any case, to allege that they are incompetent, as some draft proponents claim, is simply absurd.

We have standing military forces of over 2 million men and women (about 2,148,000), plus reserves numbering more than 1.5 million and another 1.1 million civilian employees in support roles. We have 209,500 Army troops stationed in Germany, which is slightly smaller in area than the state of Oregon. In all of NATO Europe, counting Air Force, Navy, and Marine Corps personnel, the total exceeds 344,000. There are, by comparison, about 198,600 men and women in the US Marine Corps. We have about 29,500 Army troops stationed in South Korea—more than 30 years after the end of the Korean War.

Instead of talking about the draft, we should be discussing what our strategic needs are and to what extent our populace is prepared to defend certain interests. Instead of reinstituting conscription, we should be taking a sober, realistic look at how our military and foreign-policy commitments may exceed our willingness as a people to commit our nation to war—or our ability to do so short of forced service. One need not be an isolationist to think that our foreign policy relies too heavily on the blood and breath of our young men, that we hold a distorted view of what soldiers can and cannot do in the nuclear era. The ability to seize and hold terrain may no longer mean what it once did. Such a reassessment is probably not in the cards, however, in a time when the portrayal of Rambo merits an invitation to state dinners at the White House.

"Where is it written in the Constitution that you may take children from their parents and compel them to fight the battles of any war in which the folly or the wickedness of Government may engage it?"

If our armed forces are indeed strong, the finest we've ever had, then why do draft proponents claim that we need a draft? One common answer centers on the idea of class representation throughout the military and the divisive effect of any racial or social imbalance in the ranks. In his book *National Defense*, published in 1981, *Atlantic* magazine editor James Fallows quoted a lieutenant colonel who wondered "about the morality of a nation that lets the disadvantaged do the fighting....I feel like the country is dividing up into the haves and the have-nots, and the have-nots are doing all the fighting."

That point may merit some concern, but making the military more representative by force of conscription is at least equally undesirable, if one wonders too about the morality of a nation that treats its young as chattel. That's a trait we Americans decry when our adversaries practice it.

Is it better for the state to select a man by lot and take him from his family against his will? Is it fairer to the man so chosen? to his family? And who will be the better soldier—the man who chooses to enlist or the man ordered under threat of incarceration to leave wife and child behind and do as he's told?

In his book, Fallows bemoaned the microscopic number of college graduates in the Army's enlisted ranks. As he himself pointed out, however, you're not going to get a lot of college graduates when you set out to recruit 18- and 19-year-olds. One of the things that "the haves" have is a college degree, and college graduates with a desire to join the military are overwhelmingly interested in being officers, not privates. Anyway, why do we need college graduates in the enlisted ranks?

In fact, the military may offer minority kids without college degrees a better opportunity than America's civil society. We shouldn't fault the military for being on the angels' side in this regard. Nor should we draft white kids with degrees to force better representation or limit the number of minority kids who can choose to enlist.

Regarding the education levels of enlistees, the situation has changed dramatically in the years since Fallows wrote *National Defense*. The percentage of high-school graduates among first-term enlistees was only 68 percent in 1980, 54 percent in the Army; by 1985 those figures had climbed to 93 and 91 percent, a significant improvement. Those figures refute the suggestion that our soldiers don't measure up.

In any case, conscription has never produced fighting forces representative of our society at large. Marine Corps Lieutenant Colonel David Evans, writing in the US Naval Institute's journal *Proceedings*, has pointed out that from the practice of buying substitutes, common in the Civil War and even in our Revolution, to the testing procedures that channeled soldiers from lower-class backgrounds into combat in both world wars, Korea, and Vietnam, the draft has never been fair in deciding who should die.

Evans also dispatched two other arguments raised by draft proponents: the claim that the volunteer force costs too much, and the claim, based on demographic projections, that we will be unable to recruit enough volunteers after the passage of the baby-boomers.

With regard to cost, Evans pointed out that contrary to any public perception of excessive GI pay rates, "the high-quality recruits and robust reenlistment rates of recent years cannot be explained by pay alone. Military compensation, after adjusting for inflation, is now less than at the start of the AVF [all-volunteer force] in 1973....The

real value of enlisted pay fell about 15% from 1973 to 1983 in constant dollars."

Even more to the point, Evans stressed that conscription would entail *increased* costs. He cited a Defense Department report which "estimates that a 53% increase in two-year enlistees, which would put the draft input at about the 1964 level, would result in skyrocketing costs owing to higher training loads, personnel turbulence, and reduced retention. The first-year cost could exceed $1 billion."

Refuting the demographic warnings popular among draft proponents, Evans pointed out, "Strength levels have been retained by tapping a relatively small slice of the population: approximately 13% of 18-year-old males in fiscal year 1983....From now through 1994, the pure volunteer system will be called upon to support an active force about 15% smaller than the 1954-1964 average with a 19-year-old cohort almost 50% higher than the 1954-1964 average."

Some draft proponents are simply discomforted by the emphasis on pay and benefits as motivation for enlistees, or see conscription as a way to instill and draw upon a widespread sense of obligation. For example, John Kester, formerly deputy assistant secretary of the Army for manpower, believes that "the AVF has purchased for the enlisted force the economically marginal man." So he argues for the reinstitution of a highly selective draft. Such draft proponents believe that we should not "buy" our soldiers—though that's precisely how we procure our officers, to no one's apparent chagrin.

Of course, pay is not the sole motivation for volunteers, officer or enlisted. Even if it were, where is the logic in the argument that if soldiers won't come cheap, then the government can justly resort to kidnapping? Some draft proponents urge a return to conscription as a means to inculcate what they consider a proper measure of patriotic obligation; but isn't it ludicrous to ask that we forfeit liberty in the name of patriotism?

The case against conscription rests on more than sentiment, but the sentiment involved is important. Individual liberty is among our national treasures, and individual liberty and compulsory service are mutually exclusive. In a time of genuine peril, if the United States or its vital interests were truly at risk, then we would stand together to defend our nation. I have no doubt of that. But to return to the draft in peacetime or to prosecute an unjustifiable war is to tarnish our national treasures and to demean what our countrymen have died for.

When we recall the Vietnam war, let's honor the men and women who served our country in Vietnam, but let's also remember why so many of us chose to oppose the war and the draft. They were tough, conscious choices.

Now, a decade and a half later, I hope we won't conform too much. I hope we can dissent without having our patriotism called into question again. That's a hard feeling that fell on a lot of us. Much of it was self-imposed. We questioned our own patriotism, our own manhood. We felt some guilt, and some anger. We felt that we hadn't done our duty, that we hadn't earned the right to discuss the war and the draft as validly as the men who went to war.

So we've tried to make amends, some of us have, more or less consciously. Some of us argue for a draft these days. Some of us work for the Army. Some have waved lots of flags, maybe, or got religion. Some still haven't bridged the gap, or tried, or cared to.

My college friends generally find it incongruous that I could oppose the war and the draft and then spend 12 years working for the Army, most of those years at the Army War College. But just as I believed that it was right to oppose the war and the draft, so am I proud of my subsequent civilian work for the country and the Army. Some of those old friends retain a rigid and erroneous view of the military. Some of the finest, most honorable, most decent men I've ever known have been Army colonels, and most of the servicemen I've met have been high-caliber, thoughtful people, not zealots or martinets.

Two books I've come across foster an understanding of those who served in Vietnam and those who didn't: *The Wounded Generation*, edited by A. D. Horne, and *Touched with Fire: The Future of the Vietnam Generation*, by John Wheeler. They tell eloquently of the valor of the soldier, and his heart. They are about understanding ourselves and our generation. They are about reconciliation. They are about healing wounds and bridging old divisions, bringing brothers and sisters together again after too many years apart.

As we face the issue of the draft today, we must realize that reviving conscription could encourage the sort of adventuresome governmental policy that got us involved in Vietnam, and got 58,000 young Americans killed. It's not hard to visualize the same lame justifications being applied to the Middle East or to Central America.

Yet that's not the main reason I oppose the draft these days. Intellectually, perhaps. But truly, in my heart, it isn't. Now I have a son, three years old. If he chooses to become a soldier when he comes of age, fine. I'll be like the proud papa in the TV commercial and tell him to be a good one. But I do not want the government to select him, claim him, and send him to some far-off war 15 years from now against his will.

I keep a clipping of an article by Robert Wilson, printed in the *Washington Post* on April 6, 1980, years before my son was born. It means even more to me now. The title is "My Son's Life Must Not Be Wasted." In it, Wilson tells of the birth of his son, 11 years to the day after they buried Wilson's brother, killed in Vietnam. Now he remembers together the best and most tragic events of his life.

Wilson quotes another father, writer Mark Harris, who cleanly strikes "the primary issue and the primary outrage of our time or any other: the phenomenon of mothers and fathers who, having raised their sons with such devotion, then permit their government to carry them to war."

Wilson speaks of those meaningful stares between father and son; of a son's trust and a father's devotion; of the profanity of sending your child to war. For my own son, I must quote Robert Wilson's words at length; I could not improve upon them: "It will not be for me to permit or to forbid him from fighting whatever war we have found to fight in 1998, but he will be taught, from this day until then, that his life is not a tool of American foreign policy, to be squandered or not as the politics of the day dictates.

"If the war of 1998 is not a Vietnam, and not a war for oil—can you imagine, spilling rich, red blood for thick, black oil—if it is a war of present danger to our liberty, then we will all fight, I at 46 as well as he at 18—old men, young men, and women, too. I don't believe there will ever be another war such as that; if it does come to that, he and I and all of us will die in a flash.

"Both my son's grandfathers are retired career military officers. It will be kids' play for them to point out the naivete of my views. Against their logic—and the logic of politicians, negotiators and generals, for as long as man has lived in society—I can offer only the logic of the heart: Look into my son's eyes; see how clear they are, how unbelligerent, how vulnerable. His life is worth more to me than all your logic."

For me, too, a precious son's life is worth more, and an American boy's liberty is not something to be cast aside. I would give my life for my son, but I emphatically will not give my son's life for a Nicaraguan hill, a Middle East oil field, or a politician's pride. The lives of our children are not ours to give, nor our government's to claim. ◧

Greg Todd is assistant editor of Parameters, *journal of the US Army War College. The views expressed in this article are his own and do not necessarily represent the position of the Department of the Army.*

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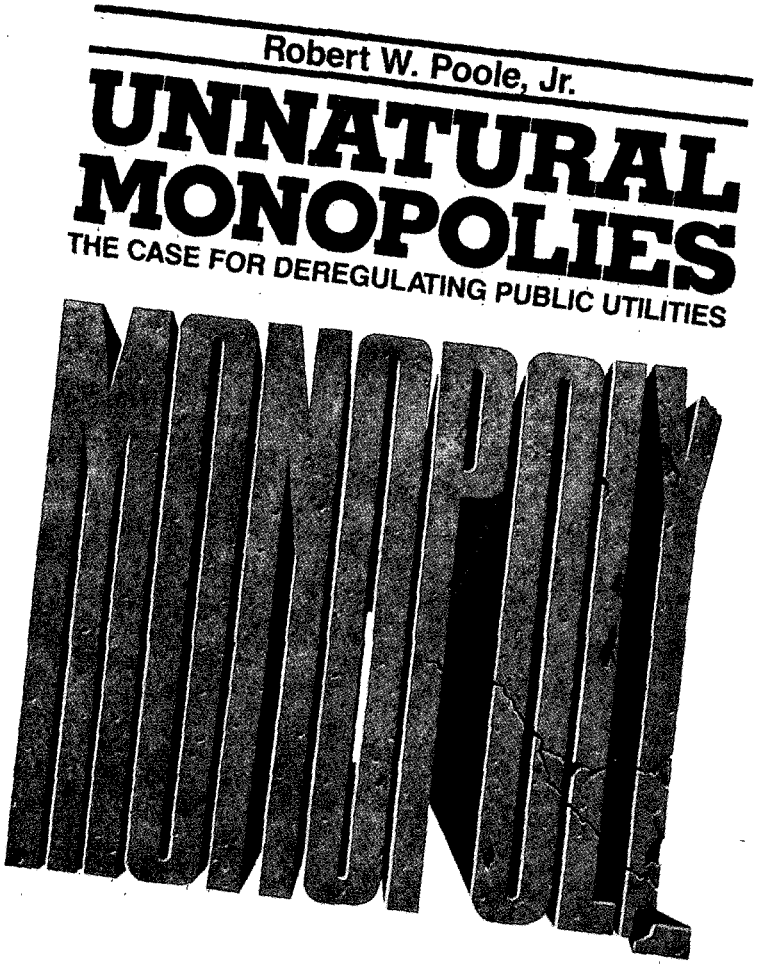

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By Warren M. Salomon

Don't Take the Fifth On the 15th

Discussing this topic in a one-page column means a brief treatment. But the subject is important, so I want to touch on it. Be warned, however: This is not legal advice. Proceed at your own risk...

The Fifth Amendment to the US Constitution covers a lot of territory, but the part that concerns us here is the privilege against self-incrimination: "No person...shall be compelled in any criminal case to be a witness against himself..." So that means: (a) we don't have to file income-tax returns; (b) the whole federal funny farm collapses; and (c) we live happily ever after--right? *Wrong!* Forget the folklore. Here's the real story.

In 1927, when the income tax was young, the US Supreme Court decided that the Fifth Amendment does not justify an outright refusal to file an income tax return (*United States* v. *Sullivan*). The case has stood for nearly 60 years; it's not going away.

Then, in 1976, the Supreme Court decided the case of *Garner* v. *U.S.* Roy Garner was a gambling man, and he came right out and said so on his income tax returns. Occupation: "professional gambler." Source of income: "wagering."

Armed with that and other evidence, the feds convicted him of a nontax offense (something about fixing horse races). Garner appealed, claiming he'd been "forced" to provide the evidence on his tax returns. The feds argued that he had submitted the evidence "voluntarily." Garner wasn't compelled to disclose *his occupation* or the *source* of his income, they said. He could have claimed the Fifth. Right on his returns!

Wait, argued Garner. The law regards a partial return as no return at all. If I refused to reveal my occupation, claiming the Fifth, I could be prosecuted under Internal Revenue Code section 7203 for failure to file. *Sullivan* says the Fifth is no excuse for not filing. I know a rigged game when I see one. I was "compelled" to reveal my occupation. Therefore you can't use it as evidence against me.

Not so, said the Supreme Court. If you really feared prosecution because of your occupation, you could have refused to disclose it. Any crime, even failure to file, requires proof of intent. You didn't intend not to file; you intended to protect yourself from gambling charges. So you could have taken the Fifth on your income tax return—

legally. But you didn't, so your disclosure was "voluntary." Good evidence; good conviction. Good-bye, Roy Garner. Hello, blank tax returns? Not exactly.

This limited use of the Fifth should not be confused (said the Supreme Court) with saying *nothing* on a tax return. *Sullivan* still stands. Most people don't have criminal activity to disclose on their tax returns, so the Fifth doesn't apply to them. In those few cases where disclosure creates a criminal problem, folks *can* claim the Fifth—but *only* as to their occupations, or whatever else might somehow incriminate them.

The concept works something like this: "Name: Al Capone. Occupation: I respectfully refuse to answer. Income: $1 billion. Tax: $500. Check enclosed. Have a nice day." Everything clear? Well, not to some people.

Robert Neff, a San Jose police officer, wasn't a professional gambler—but he played for high stakes. He bet his liberty when he filed "classic" Fifth Amendment returns for 1974 and 1975, providing no information—except 100 pages of tax protestor literature. A jury convicted him of failure to file (not unusual in such cases). Neff appealed, arguing that what he did was sanctioned by the Supreme Court in *Garner*. Good defense, right?

Wrong. Unlike Roy Garner, Neff had no reason to claim the Fifth. His conviction was affirmed, based on *Sullivan*. Wham, bam; bye-bye Bobbie.

But sometimes people get lucky. Robert Ellis of Kismet, Kansas, beat the system. He filed a Fifth Amendment return for 1976, and the feds prosecuted him on one count for that one year. A fantastic break. It's much easier to prove intent with a few years of such tax returns to point to, but they went after Ellis anyway. The judge, moved by Ellis's poverty, ignorance, pregnant wife, and—get this—his blind reliance on some tax-protestor guru, found that his failure to file wasn't willful.

But don't get any crazy ideas.

The law is a tapestry of *all* relevant cases, not just the happy exceptions. *Ellis* was a prosecutor's mistake, decided solely upon the confused motivations of a woeful defendant, who messed up only once, and who might as easily have babbled about astrology instead of the Fifth Amendment.

Yet *Ellis* is the type of case that misleads the gullible. If some tax rebel is recruiting you, he'll show you decisions like *Ellis*. "See, boy? Nuthin' to it. Ellis did it. You can too." But he won't tell you that he's showing you one oddball case, and hundreds went the other way.

In my opinion, no one should rely upon the tax-protestor litany as authority for filing a "classic" Fifth Amendment tax return. Believing in such folklore is like believing in faith healing. Strange things do happen, but oddities prove nothing about the curative properties of mumbo-jumbo.

So forget the Fifth on April 15th. Unless you're a gambling man.

Warren Salomon is an attorney and tax specialist practicing in Miami.

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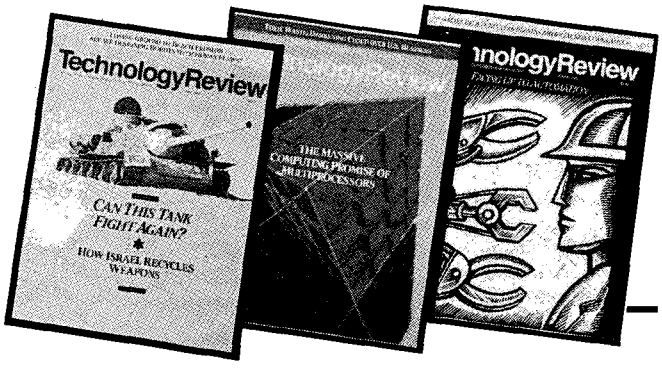

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By John Dentinger

Milton's Rose

At the ripe age of one year, three months before the First World War began, Rose Director had the sense to emigrate from Russia to America. With her parents and four older siblings, she settled in Portland, Oregon.

Today, she is an economist, a best-selling author, and one of America's foremost proponents of free-market principles. But Rose Director Friedman is often overshadowed by her Nobel laureate husband, Milton, with whom she wrote the popular books *Free to Choose* and *Tyranny of the Status Quo*.

She doesn't mind, though. In their 48 years of marriage, the Friedmans have acted as a team, each contributing to and supporting the other's work. And it helps, admits Rose, that "I wasn't born with a strong competitive gene."

After graduating from Reed College, Rose went in 1932 to study economics at the University of Chicago, where her older brother, Aaron, was an economics professor. In the 1930s, she recalls, "everybody was greatly interested in economics. They saw the problems of the world, and those of the country, in terms of economics."

It was at Chicago that she met Milton Friedman. Since the professors seated students alphabetically, they usually wound up next to each other in class. But they didn't fall in love until the fall of 1934, when Milton returned from a year at Columbia.

"After a year's absence," says Rose, "we seemed to be drawn to one another and spent much time together—not all of it studying....The better I got to know him, the more I loved him."

In 1936, after completing their courses and written exams, Rose and Milton left to look for work, hoping to find time along the way to write their dissertations. "Teaching jobs were few and far between," Rose says, "but fortunately for economists—if not for the country as a whole—the New Deal was in full swing, so we both started our careers in Washington." (She worked for the Agriculture Department and the Federal Deposit Insurance Corporation.)

Today, the Friedmans, who married in 1938, live in an apartment on Russian Hill in San Francisco, within walking distance of Chinatown's restaurants and Fisherman Wharf's shops. But they spent their first summer together in a more rustic setting—a New England cottage "without electricity but equipped with good Aladdin lamps and a good wood-burning stove," recalls Rose. "We worked on our research projects separately and together, typing our own or the other's as the need arose and doing the household chores."

Rose Friedman

Rose never completed her dissertation —A History of Capital Theory. "It seemed an impossible subject," she says, "and I rationalized that I could do what I wanted to do without a 'union card.'"

When they had children, Rose became a full-time mother, pursuing economics part-time after Milton came home from work. While the children were young, she stuck to fairly limited projects, such as editing articles, then resumed original research in consumption economics when they were in their teens.

"Every woman should be free to choose," she stresses, "but if she chooses a career, I'm not sure she has a right to have children."

She speaks with pride of the results of her career as a mother. The Friedmans' daughter, Janet, a graduate of Berkeley's Boalt Hall law school, is an attorney in Davis, California. Their son, David, first earned a Ph.D. in physics—"because we 'brainwashed' him," jokes Rose, by saying they didn't want too many economists in one family—but he now teaches economics at Tulane.

While she was raising her children, Rose's interest in economics was maintained and stimulated primarily through participation in her husband's work. "He never wrote an article without discussing it with me and inviting my criticism—sometimes even taking it."

The Friedmans, who both have offices at Stanford's Hoover Institution, have always considered themselves "liberals in the original European sense," says Rose. "To be a conservative means you want to keep things as they are. It's very obvious from everything we've done that there's a lot we'd like to change."

Their experiences as children of immigrant shopkeepers left them strong believers in the free market. "I've often heard Milton say," she recounts, "that if the United States had had a minimum wage rate when his parents immigrated to this country, they could not have come here and that, if he had existed at all, he would now be living behind the Iron Curtain. Surely, they were far better off working for a few years in 'sweatshops' in this country than being condemned indefinitely to remain in Hungary."

These ideas reached a wide audience in the Friedmans' book, *Free to Choose*, which became a bestseller. They shared the writing, says Rose, "the same way that we live together—by cooperating." After writing separate chapters and exchanging and rewriting drafts several times, they're not interested, says Rose, in who wrote what. "The final product is 'our book.'"

Her husband agrees. "Over a long and happy marriage," he explains, "we have come to understand one another's views and interests sufficiently that we would be hard-put to know who wrote which sentence. That doesn't mean we always agree. But when we disagree we understand why and where."

John Dentinger is a free-lance writer in Los Angeles.

Villian and Vampire: Businessmen in Literature

By Edward Cline

ILLUSTRATION BY RICHARD DOWNS

Fair sir, you spit on me on Wednesday last. You spurn'd me such a day; another time you call'd me dog; and for these courtesies I'll lend you thus much moneys?

Shylock to Antonio, Act I, Scene III, *The Merchant of Venice*

I never got to study Shakespeare in high school. By the time I started, he had been supplanted by J. D. Salinger's *The Catcher in the Rye* and other contemporary, topically relevant literary works, most of them forgettable and authored by lesser, meaner minds than the Bard's.

Later, I was grateful that I was spared an introduction to his work then. No doubt it would have been filtered through the Deweyian strainers of gender consciousness, minority appreciation, and antiviolence sensitivity and blended in a potpourri of egalitarian mixers. His plots, characters, the beautiful profundity of his language—the whole broad landscape of Shakespeare—were left for me to discover without benefit of interpretation via the National Education Association.

Nor was the subject of the role of businessmen in literature broached in those generously labeled "literature" courses. Business didn't exist in literature. It just barely merited mention in sophomore history and senior civics, where, if it was noticed at all, it was portrayed either as a glum spectator to the parade of the state or as a recalcitrant sheep that needed its hind legs nipped periodically by the Lassies of the public interest.

"Businessmen" is a broad category, encompassing bankers, merchants, industrialists, manufacturers—anyone responsible for the production of material wealth. They have appeared in literature since before the Greeks, but I arbitrarily begin with Shakespeare, and specifically with his *Merchant of Venice*, because the author and his work are closer to our time, and because Shakespeare was probably the first major writer to create an important business character.

The "merchant" of the title is Antonio, not Shylock the moneylender. Of the two characters, Shylock is the more interesting, if only for the intensity of his feelings. Antonio is something of a pompous, profligate windbag and not very convincing as a captain of commerce. Shylock is a three-dimensional character, even though his overall treatment reflects an unpopular view of Jews in the Elizabethan era.

Sentiment against usury was so strong that only Jews were permitted to practice it with near-impunity. Shylock's legal claim to a slice of the merchant's flesh served two purposes: it was his revenge for being maligned in public by Antonio, and it was the central conflict of Shakespeare's usual family of conflicts. The ethics of usury may have even intrigued him, and this might have been his only means of addressing the subject. In the end, Shylock is compelled to waive both Antonio's debt and the pound of flesh, to become a Christian and to have half his property given to Antonio. He also must bequeath his entire estate to his daughter and the Christian she has married against Shylock's will. In return, he retains his life and half his wealth. This was the most justice Shakespeare dared give him in his time.

The businessman has ever since been ranked with the vampire, the criminal, and the tyrant as a stock pariah and nemesis of society. It would be fair to say that he has been accorded markedly less sympathy than has the werewolf. Until the 19th century, the merchant, the entrepreneur, and the banker were all relegated to minimal roles in literature, usually as minor antagonists or as subjects of satire. While businessmen made the rise of the West possible, few writers bothered to explore the possibility that they might have been just as rich a potential for dramatic expression as lords, vagabonds, or picaroons.

"Go make my coarse commodities look sleek, with subtle art beguile the honest eye," urges a woolen draper in Thomas Middleton's *Michaelmas Term* (1606). Middleton's unflattering portrayal of the trader may be taken as a moderate instance of the esteem in which the businessman was held up through the Enlightenment. "Shoddy goods" were only an excuse for writers to ignore the morality of profit and value-for-value trading. In their eyes, the ethics of created, earned wealth was too contemptible a subject to treat seriously.

But the power of the Enlightenment inevitably altered that view. Writers could no longer feign blindness to or remain incurious about the incredible explosion of wealth and rise in living standards spawned by that intellectual revolution. God against king and king against prince fast faded as exciting vehicles of moral conflict. The literature that used those themes and that survived was written by such titans as Hugo, Schiller, and Goethe. The rest has almost vanished from serious critical attention.

The problem was that most writers could not conceive of treating the businessman as an autonomous individual whose problems and conflicts were as uniquely personal and universal as those of any other highly visible "role model." They could not accept him at face value as they could a king, statesman, cleric, or soldier. A king had his conscience, a cleric his temptations, a soldier his honor. What could a merchant *do* that was virtuous? The risks and rewards of trade, of investment, of innovation—these were actions viewed as outside the bounds

of morality, even though they were the source of a writer's quill, foolscap, and fashionable clothes.

The best writers could do was portray the businessman as an upright, respected, responsible member of his community, or as an enemy of that community. The novels of the early Victorian age, particularly those of Charles Dickens, are chock-full of business characters, some of them "upright" and even admirable, others insatiable, often charming frauds who prey on a gullible public.

The attitudes of novelists and playwrights in the early to mid-19th century mirrored those of such prominent theoreticians as John Stuart Mill and such *beaux esprits* as John Ruskin and Samuel Taylor Coleridge. "I confess I am not charmed with the ideal of life held out by those who think that the normal state of human beings is that of struggling to get on," wrote Mill in *Principles of Political Economy* (1848). He described the "success ethic" as one of "the disagreeable symptoms of one of the phases of industrial progress." Ruskin fantasized about how the Industrial Revolution might be disguised (for example, by designing railway trains to look like dragons), while Coleridge bemoaned the demise of an "enlightened aristocracy" and the exodus of rural poor to the cities, away from the ministrations of a patronizing gentry.

To this day, Europe has never entirely expelled the vapors of caste. Its culture has yet to allow business to rid itself of its inferiority complex. But what was happening during this period in America, which had no philosophy of predestination and no built-in prejudice against business?

For the most part, America's preeminent thinkers, intellectuals, and observers wished that the opposite were true. The outstanding champion of business was Horatio Alger, whose novels of success may have helped to popularize the ethics of individualism but did not explain *why* that ethics ought to have been a value.

And American novelists and playwrights did produce business literature. However, just as many of America's leading intellectuals, in philosopher Leonard Peikoff's words, were "alienated by the basic premises of the country, [and] hostile to the essential character of its institutions, its traditions, and its people," many of its leading novelists, especially in the latter half of the 19th century, were tongue-tied by the unabridged individual, by galloping industrial progress, and by a population that was almost universally unresponsive to their charges that the "success ethic" was a cruel hoax. What they finally did was abandon their frontal assaults and launch a literary flanking movement.

In 1884, John Hay published what was regarded as a major pro-business, pro-success novel, *The Bread-Winners*. Its convoluted, saccharine plot is the genteel ancestor of television's *Dallas* and *Dynasty*. A year later, H. F. Keeton answered it with his antibusiness novel, *The Money-Makers*, a similarly contrived work written, however, with much more conviction. In it, Hay's original industrial magnate/union organizer, warm-hearted-fellow/conniving rabble-rouser roles are simply reversed.

In both novels, confused, sensitive scions of the tycoons are unsure of where their duties lay until outside events precipitate action one way or the other. And in both novels, these duties concern the welfare of others and a heightened sense of *noblesse oblige* to some segment of society.

The two major American novelists of the late 19th century were Henry James and William Dean Howells. James was the finer, sounder writer. His most acclaimed works are *The Bostonians* and *Washington Square*. But he found America barren of serious subject matter and viewed Europe as his intellectual and artistic home.

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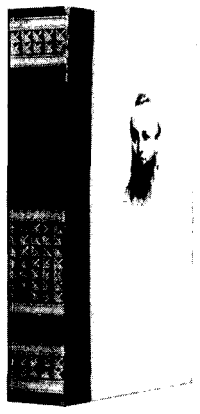

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His friend and colleague, Howells, though, felt right at home. While not as prolific as Alger and certainly not as perceptive a writer as James, Howells virtually cornered the market for "serious" novels of business and success.

In *Annie Kilburn* (1889), *The Minister's Charge* (1887), *A Hazard of New Fortunes* (1890), and in many other novels, Howells devolved the creed that money isn't everything, that the lower classes have legitimate grudges against the reigning moral and economic system, and that the pursuit of one's own happiness inherently entails injustice and suffering for others. His most famous work, *The Rise of Silas Lapham* (1885), which chronicles the progressive corruption of a successful man as he seeks to be accepted by Boston society, was a standard subject of study in American high schools for decades.

What was the answer of American businessmen to these novels? Many chose to say nothing. Most ignored them as unimportant. But the muteness was understandable. An explicit ethics sanctioning capitalism had never been formulated. An explicit philosophy separating the state from the individual had yet to be invented.

In the meantime, the only noteworthy response was Andrew Carnegie's *The Gospel of Wealth* (1889), in which he asserted that great industrial enterprises are created by the strong and ruthless (without any reference to rights). These enterprises, he offered in expiation, are but trusts administered by the winners of the struggle for the benefit of the public.

Positions like that were meant to be the finger in the hole of the dike, but all they did was help to enlarge the rupture. What followed was a deluge of antibusiness literature. Frank Norris produced *The Octopus* (1901) and *The Pit* (1903); Robert Herrick, *The Common Lot* (1904) and *The Memoirs of an American Citizen* (1905); Jack London, *The Iron Heel* (1908) and *Burning Daylight* (1910); Theodore Dreiser, *The Financier* (1912) and *The Titan* (1914); and Upton Sinclair, *The Jungle* (1906), *The Metropolis* (1908), and *King Coal* (1917).

Not all of these novelists urged complete condemnation of the businessman. London's *Burning Daylight* and Howells's *Lapham*, for example, claim that spiritual renewal and moral salvation may be found through the renunciation of business, finance, and innovation. These and other redeemed business characters retreat to the wilderness or to old-time religion or to some other form of passivity. They accept the nostrum that integrity, honesty, and genius are incompatible with capitalism, which can only corrupt the truly moral man by inculcating ambition and selfishness.

With the publication in 1943 of Ayn Rand's *The Fountainhead*, the game, to paraphrase Shakespeare, was up. Rand must have taken some pleasure in turning all the standard assumptions on their heads. Gail Wynand, the ruthless, self-made newspaperman, for example, unwittingly practices everything that had been preached to businessmen in the past. He is ultimately obliged to endorse the destruction of his best friend, Howard Roark, an architect, innovator, and something new in the pages of literature—a man of independent self-esteem whose soul is not tied to society or to any altruist notion.

On the other end of this novel's spectrum of business characters is Hopton Stoddard, the aging, itinerant millionaire who "found relief in religion—in the form of a bribe." When a shaken Stoddard returns from a worldwide tour of religious shrines, Rand says of him with dark humor that "he had been driven to the conclusion that his life qualified him for the worst possible hereafter under any system of faith." In Wynand,

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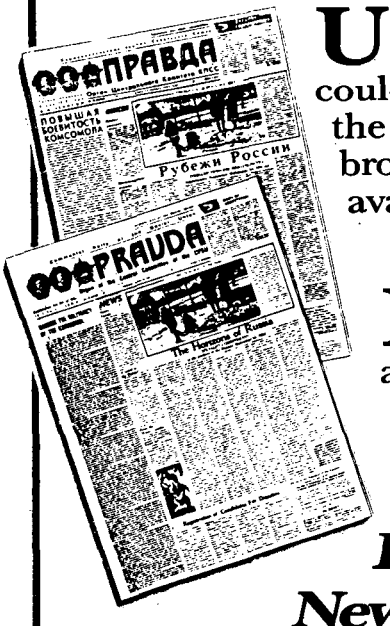

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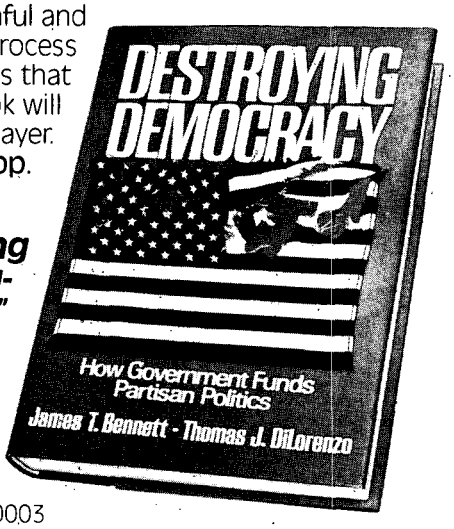

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she illustrated the tragedy of a great man who molded his life on altruism from contempt for the morality and the men who subscribed to it. In Stoddard, she created a foil who was almost a caricature of previous novelists' conceptions of a "redeemed" businessman.

Gail Wynand's conflicts are refined in the character of industrialist Hank Rearden in Rand's *Atlas Shrugged* (1957), with the difference that Rearden questions the moral code that is supposed to govern both his business and his personal life. When he has his day in court—when he publicly rejects the right of a tribunal to penalize him for having conducted "illegal" business—we know that his end will not be the same as Wynand's.

Atlas Shrugged was not written exclusively as an answer to any particular antibusiness novel, but it is important to note an inversion in its characterizations that is a product of the novel's radical theme. All the virtues that previous novelists had asserted businessmen ought to be imbued with—including the primacy of service over self-interest and the disavowal of the profit motive—are precisely those possessed by businessmen in this novel who are heavies, incompetents, and fence-sitters. Moreover, they are also the sneaks, the frauds, the cowards, the looters, and the extortionists, not in spite of their altruist virtues but *because* of them. Among many other things, *Atlas* developed the theme that the altruist virtues men have clung to for centuries are actually vices.

In terms of the business novel, was there life after *Atlas Shrugged*? Yes, if one concedes that to be comatose, one must first be alive. Business novels have been published since *Atlas*, but overall they perpetuate the altruist-collectivist theme—or no discernible theme at all. *Atlas* was a literary supernova whose light has yet to reach the lifeless pages of modern literature. Our novelists, critics, and professors of literature have neither the equipment—intellectual or literary—to grasp that novel nor the inclination to acquire any.

Nearly 6,000 miles and 360 years separate a Venetian court of law from a Chicago appellate court and the verdict against another moneylender, banker Midas Mulligan (one of the earliest "strikers" in *Atlas*), who was ordered to loan his money to men who claimed a right to it because of their need for it. And a whole new philosophy governed his response to the wrong dealt him by the court. Literary justice was exacted after all—and much, much more than a mere pound of flesh.

Edward Cline is a free-lance writer.

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Life was not always rosy for me. I got involved in a bad business investment two years ago and I lost more than $11,000. I lost every cent I had, even money I didn't have. I worked as a clerk by day and a waiter by night. I never really liked cleaning tables, but what else could I do? I had to stop disappointing my loved ones. I remember coming home on Mother's Day really anxious to call my mother, only to find the phone disconnected. I went through my mail and prayed for some good news, only to find an envelope with no return address—it contained an eviction notice. We were fortunate to have relatives that were kind enough to let us stay with them. I didn't know that being in debt could hurt so much. I prayed for a way out.

My friend Gary who was in the same financial boat as me told me a story that changed my life forever. He told me very excitedly "I received a funny-looking letter in the mail. When I first saw it, I thought it was another creditor making a claim on me. The letter told me about money that was rightfully mine—it said that if I signed the enclosed form, I would receive $2,592.59. Things were so bad that I had nothing to lose, so I signed the form neatly and returned it to the company.

Ten days later I received a check for $2,592.59. With an explanation. A distant aunt had died and left $4,320.98 in her savings account. The company that found me collected $1,728.39. The firm had no trouble finding out that I was related to her. Just for matching up people with the same last names, that company was making millions each year."

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This great opportunity really excited me. I was compelled to find out more about it. What could I lose? I found out everything I could and began to work on a plan. I put it into effect. My prayers were heard. To my relief I started to make more money than I have ever seen in my life for doing practically nothing. In fact my income last month was $50,076.78.

I got a C-minus average in high school—one year, I got an F in English. By no means was I ever considered to have the smarts. **All you have to do to make up to $2,000 an hour is thumb through phone books and make a few calls.**

My family and I have always loved the beach, so last summer we moved into a gorgeous home. My wife told me it was her life long dream to own a brand new car. You should have seen the tears of joy when I surprised her with her new $20,000 car. Later I bought a 1986 Mercedes 560 SL. That cost me over $50,000.

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Twenty-five billion is just setting there waiting for someone to recover it. One out of ten Americans have forgotten or lost money in bank accounts, stocks, insurance premiums, etc., worth as much as the amount of $10 bills you could lay end-to-end around the world: **$25 billion.** I will disclose a plan to you that will show you how to get your hands on this money.

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Let me give you a random sample list from the state of Wisconsin. (Addresses are included in the lists.)

Owner's Name	Property	Amount
Drinka, Teresa, A	Savings	$10,891.47
Lavelle, Samuel	Stock Proceeds	$21,529.61
McDonnell, Martha	Savings	$12,843.78
Meyer, Thusneida	Savings	$18,489.18
Patterson, Arthur	Savings	$14,629.24
Stien, George	Savings	$57,525.83

This listing is only a minor portion of the $25 billion in unclaimed property that is waiting for you.

California still hasn't found the owner of one account worth $186,000. Someone in Massachusetts left behind $400,000. North Carolina owes one person $500,000. **All you need is a phone and a phone book to get your share of $25,000,000,000.**

Sample Proof

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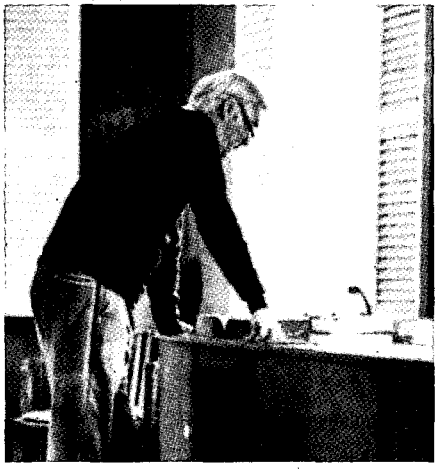
What Went Wrong with the War on Poverty

By Walter Williams

***Family and Nation*, by Daniel Patrick Moynihan**
New York: Harcourt Brace Jovanovich, 207 pages, $12.95

In *Family and Nation*, Sen. Daniel Patrick Moynihan strikes me as a general who is groping on a defeated battlefield counting casualties. Shocked into a stupor by the ugly facts of defeat, the general reminisces: "If we had only tried this!...If we had only done more of that, and had there been more commitment—we could have won the war." The scene is the body-strewn landscape of our war on poverty. Befitting the scenario, chapter two of *Family and Nation* bears a title quite appropriate as an epitaph for our warrior's escutcheon: "In the War on Poverty, Poverty Won."



Family and Nation begins with Moynihan's recitation of the casualties: "In 1984 the proportion of poor black children under 6 *rose* to 51.1 percent....The number of female-headed families had increased by 28 million (97 percent) since 1970....The poverty rate in 1983, 15.2 percent, was at its highest level since 1965." War casualty statistics spill over into chapter two, where we learn: "In 1984 half the poor in America (47.8 percent) lived in female-headed families....Only 2 percent of two-parent children were low achievers [compared to]... fully 40 percent of one-parent children."

A reasonable interpretation of Moynihan's lament is that the American family is in decline and that government, especially under the Reagan adminstration, is doing little to stop the decline. To stem the decline of the family, Moynihan proposes that "formulation of a national policy concerning the quality and stability of life could be the cornerstone for a new era of U.S. social legislation."

Therein lies the problem: the attempt to do something inherently impossible. Man's ignorance and arrogance makes him think that just because he managed to split the atom and travel to the moon, he can easily accomplish "trivial" tasks like managing the family and the economy.

Like any other politician, Moynihan proudly boasts of the visible beneficiaries but ignores the invisible victims.

We cannot know all of the unknown and possibly unknowable web of social interrelationships that lead to and sustain that spontaneous order known as the family. The evidence available suggests that all government intervention can do for the institution of the family is weaken it. For example, some government undermining of the family has been brought about by the "adultification" of children through court decisions that consider it a violation of a minor's rights to privacy if parents are notified when their children receive a prescription for birth control or have an abortion. The specific relationship between government policy and the decline of the family may be difficult to ferret out, but economic theory can give us some broad outlines.

The Law of Demand, from which there is no escape, predicts that when the cost of a behavior is reduced (or its benefit increased) we will see more of it. Sex is fun, premarital or otherwise. The cost of premarital sex can be the stigma of pregnancy, the child labeled a "bastard," abject poverty, and venereal disease. Since the 1960s these costs have been in decline. For many, there is no stigma to pregnancy; in reference to a child, *bastard* has gone out of usage; and government welfare payments provide a floor to poverty. It is only our new exotic diseases that threaten to up the ante on the '60s teaching to "let it all hang out."

Moynihan hints that the welfare state *might* encourage family destruction and dependency, but he points with pride to what it's done to eliminate poverty among the elderly. Indeed, poverty among the elderly has been all but eliminated through government programs. But just like any other politician, Moynihan proudly boasts of the *visible* beneficiaries of government policy but ignores or disavows that it has *invisible* victims—invisible in the sense that no one makes the connection between a government policy and the victims.

Social Security payments have provided its recipients with many times over the value of their "contribution." But the Tooth Fairy did not give Congress the money for that miracle. It was obtained through higher payroll taxes on workers. Higher payroll taxes increase the cost of hiring a worker. Higher worker costs make the employer seek more-productive employees or substitute capital for labor. Both measures reduce the employability of the least-skilled worker for whom Moynihan weeps.

Senator Moynihan has probably voted in support of measures that aggravate the plight of poor people. Increases in the minimum wage constitute one example. One wonders what Moynihan's position is on New York City's taxi-licensing law that makes the license for his constituent to own one taxi, an employment opportunity for the poor, cost more than $100,000.

the book case

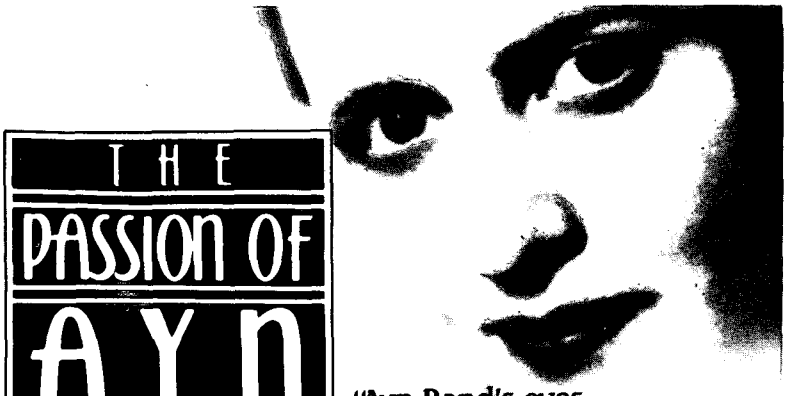
In his recent pathbreaking work, *Losing Ground*, Charles Murray argues that the '60s poverty programs actually harmed the poor. According to the anti-Murray camp, in which Moynihan is a charter member, welfare does not generate incentives for family breakup or stifle the work ethic. Moynihan cites some of the statistics—selectively. But studies that Moynihan chooses not to cite suggest that welfare does make a difference.

Lowell Gallaway and Richard Vedder, economics professors at the University of Ohio, find that 50 percent of the increase in the divorce rate between 1964 and 1979 can be explained by welfare growth. They also report that between 1969 and 1979, poverty among children fell in West Virginia by 24 percent and rose in New York by 50 percent. They say that income differences by states must explain some of the variation, but we cannot be blind to the effect of welfare benefits that are 90 percent higher in New York than in West Virginia.

Moynihan does not say much that is meaningful about causal factors. He just drags out more casualty statistics from the War on Poverty: "For children under six, the poverty rate is nearly seven times that of the elderly: 17.5 percent compared with 2.6 percent....In 1984 approximately 33.7 million persons were poor. Children, who represented less than 27 percent of the overall population, comprised 40 percent of the poor. Children were the only age group overrepresented in the poverty population."

According to Moynihan, the overrepresentation of children in poverty, relative to the elderly, is because Social Security payments, in constant dollars, have risen 54 percent since 1970 while AFDC (Aid to Families with Dependent Children) payments per recipient have fallen by 34 percent (the decline is overstated to the extent it does not include in-kind payments such as food stamps, school lunches, housing subsidies, Medicaid, and the like).

In one sense Moynihan is right. Children have less political power than older people to use government as a means to higher income. After all, what senator owes his seat to the children's vote? But many senators do owe their seats to the senior-citizen vote. In political hardball, those with political clout are favored and those without clout are dumped on. That reasoning may help to explain why we have a minimum wage and why youngsters have been drafted instead of fully capable older people. If we choose to pursue the more sinister answer to Moynihan's observations, we might also add that children are used as tickets to the dole. Those without children are locked out



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of Aid to Families with Dependent Children.

In reading the 194 pages of *Family and Nation* it is difficult to find sensible analysis of the problem of family breakdown in America. Instead we get a whimpering about the casualties. The only policy recommendation that emerges is a plea to give the poor more of the poison that got them to where they are in the first place—dependent upon the welfare state.

The most useful feature of the book is its demonstration to the careful reader that politicians do not understand the effects of their policy. They are well intentioned. Moynihan is well intentioned, but the road to perdition is lined with good intentions and so are the streets of Detroit, Chicago, and Philadelphia and the back roads of Appalachia.

Despite Moynihan's suggestions, Americans are the most generous people on the face of this earth. About 80 percent of all world giving is done by us. But we have forgotten the most important question to be asked when setting out to help someone: What is the effect of our help on the person's own incentives to help himself? We have forgotten that question. As a result we have created a group of people who are immune to the standard cure for poverty—economic growth.

Family and Nation could easily be filed among that voluminous set of materials catalogued under the heading, "Priceless Economics." That category is reserved for works where the author sees an increased presence of a certain behavior but ignores the role that prices (the costs associated with that behavior) may have played. The author instead blames solar activity, greedy Arabs, rapacious businessmen, moods, styles, evil spirits, greed, cardinal humors, and the like. What is truly amazing about the Senator is his willingness to accept the fact that government subsidies increase our supplies of wheat but will not seriously question whether government subsidies also increase our supplies of irresponsible behavior.

Contributing Editor Walter Williams, the John M. Olin Distinguished Professor of Economics at George Mason University, is the author of The State Against Blacks.

Dystopia, Feminist-Fundamentalist Style

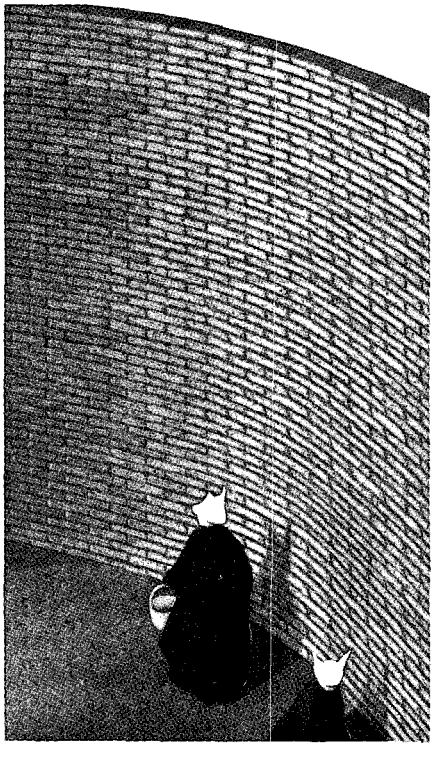
By Martha Bayles

The Handmaid's Tale, by Margaret Atwood
Boston: Houghton Mifflin, 311 pages, $16.95

Since Sir Thomas More, utopias have been described from the point of view of a visitor, not a citizen. Obviously, the happy citizens of a perfect society would have no reason to write about it. And only a representative of harsh reality (the author's world) can provide the necessary tension between what is and what ought to be. In fiction, as in life, no one has yet created a vacuum-sealed paradise.

In the other kind of utopian fiction, satirical or negative "dystopias" like Orwell's *Nineteen Eighty-Four* or Huxley's *Brave New World*, a different dynamic is at work. Since these authors' purpose is to criticize their own society, they can't exactly send in one of their contemporaries to provide a positive contrast. Instead they create a Winston Smith (Orwell) or a Bernard Marx (Huxley): an ordinary citizen upon whom the scheme of social perfection fails to work.

The source of the aberration may be trivial: an improperly placed telescreen in Winston's apartment enables him to sit alone in a world where no one ever escapes the ultimate surveillance of the Thought Police; an extra drop of alcohol on Bernard's fetal bloodstream enables him to experience unhappiness in a world where no one ever feels anything but blissful contentment. But the effect is far from trivial: in each case a mind becomes free enough to bear witness to an unfree world.



Margaret Atwood, the highly sucessful Canadian poet and novelist, has created a dystopia based on feminism and Biblical fundamentalism in her latest novel, *The Handmaid's Tale*. The Republic of Gilead is a smaller, more precarious totalitarianism than Orwell's or Huxley's; it has only existed for a few years in part of the United States. As for Offred, the main character, she is both visitor and citizen, having lived through the social upheaval that brought Gilead into being.

Atwood is a talented wordsmith, and her initial premise is intriguing. She sees an affinity between the fundamentalist right and certain extremist feminists, noting that they both oppose some expressions of sexual freedom, such as pornography, with the virulence of true *jihad*. In the one case the holy war is against Satan; in the other, Men. These two ideologies have blended into one in Gilead (named after the Biblical land where Jacob lay with the handmaid Bilhah because his wife Rachel was infertile). Women are protected, morals are pure, and society resembles a convent-cum-breeding-farm run by the Gestapo.

This conception, plus Atwood's flair for detail and sensuous description, carry the reader nicely through the first few chapters. But the challenge of dystopian (or utopian) writing is to sustain interest and curiosity beyond the initial unveiling of an imagined future, to the stage where the deeper implications of that future engrave themselves on the mind and spirit of the misfit who is telling the story.

It's a challenge *The Handmaid's Tale* fails to meet. We learn the basic facts about Offred: that she lives the extremely restricted life of a Handmaid, or fertile female assigned to the household of a Gileadean leader called a Commander. We learn that she has no identity as a person; even her name ('of Fred') is nothing but a designation of her duty to bear children for this particular Commander and his barren harpy of a Wife.

Yet beyond these details, the larger outlines of the society are never more than vaguely sketched. When the Commander shows unorthodox interest in Offred, she tells him that what she wants more than anything is to "know...what's going on." Thus we look forward to the next step, to the Commander's attempting to explain and

justify Gilead to one of its oppressed—just as the authorities do in both Orwell and Huxley. We don't expect Offred to agree with what the Commander says; on the contrary, we expect her to fight. But we crave something substantial—some wide-ranging if wrong-headed philosophy—for her to fight against.

We don't get it. Instead, the story proceeds with another cliched account of a powerful man taking sexual advantage of a powerless woman, without respecting her personhood. The danger of these chapters is that the reader will get a dislocated jaw from excessive yawning.

Optimists, and of course reviewers, will read on, still hoping to learn more about Gilead by discovering what happened during the crucial period of revolution and social reorganization. In early chapters, Offred speaks dreamily of the "Time Before," which resembles America in the late '80s. She recalls few details, however; and her very dreaminess suggests some terrible brainwashing in the reeducation camps of Gilead. So again, we look forward to a fuller vision of this awesome transformation.

Again, though, we are disappointed. It turns out that Offred had to spend a couple of years in an institution run by female propagandists called "Aunts," who occasionally tortured a runaway. But basically the place feels a lot like a girls' boarding school. Moreover, it also turns out that Offred can recall a great deal about the Time Before.

Unfortunately, her recollections lead to the dispiriting revelation that even back then, when she possessed all the advantages of higher education and the Bill of Rights, Offred was a pretty dim bulb. Drifting around Cambridge, Massachusetts, she knew nothing about the names of buildings or the history they represented. When the Gileadean revolutionaries marched into town and forbade all women to work, she hadn't the foggiest idea where these uniformed men were coming from. At one point she says that she "hadn't noticed" that the army depriving her of her livelihood was not the American army. Illiterate villagers in the Third World demonstrate a better grasp of the changes taking place in their societies than this dame does.

Atwood deliberately makes Offred nonfeminist—presumably because she wants to show all these terrible things happening to a typical Everywoman, the better to warn us. Yet although Atwood knocks certain extremists, she is nothing if not an orthodox feminist in her views, including the one that says ordinary, nonfeminist women are necessarily benighted. Offred is an empty vessel not only to her Commander but also to her creator. Unlike Winston Smith and Bernard Marx, she doesn't strive to figure out "what's going on." Even under the best of circumstances, she remains passive, unable to form or refute a single coherent idea about the world without the help of stronger characters who just happen to be feminist.

If this is Atwood's opinion of the raw, unreconstructed material of human nature, then she shouldn't be writing a dystopia. She should be ruling one.

Martha Bayles's fiction, reviews, and essays have appeared in numerous publications, and she writes a regular TV column for the Wall Street Journal.

Taking Issue with the State

By David D. Friedman

Takings: Private Property and the Power of Eminent Domain, by Richard A. Epstein, Cambridge, Mass.: Harvard University Press, 362 pages, $24.95

Nor shall private property be taken for public use without just compensation.

--Eminent domain clause, US Constitution

The central proposition put forth by Richard Epstein in his much-discussed *Takings* is very simple. The only power government properly has that private individuals do not is the power to compel a transaction—to force an individual to sell (or buy) something. This power is limited in two ways. First, the government must pay to the seller, in cash or in kind, the full value of what it takes. Second, the government can exercise this power only "for public use"—the benefits of the forced sale must be fairly divided among all members of society.

In expanding and defending this claim, Epstein intertwines three separate lines of argument, one based on political philosophy, one on the US Constitution, and one on economic analysis of law. The result is an

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impressive and interesting book, but a difficult one to summarize.

Epstein starts by arguing that, without the power to force a transaction, government can neither come into existence nor do the things for which it exists—defend property rights and, more generally, provide public goods. Any attempt to form a government will be undermined by "free riders"—individuals who receive the benefits that government provides while refusing to pay for them. The government cannot respond by restricting the benefits, since they are public goods. An obvious example is national defense; there is no way to build an orbital satellite that will shoot down a missile aimed at Jones, who has paid his share of the bill for constructing the satellite, but will ignore a missile aimed at Smith, his next-door neighbor, who has not paid for the satellite.

But how can the government be prevented from using its power to simply steal property from one individual and give it to another? Epstein adds a requirement that the victim of a forced transfer must be fully compensated. Then, to prevent government from appropriating all of the gain produced by its actions, and thus to prevent a perpetual power struggle over who controls the government, he requires that any forced transfer be "for public use"—the benefits of government in general, and of any particular coercive act, must be divided among all members of the society roughly in proportion to how much they would have had if there had been no government or if the particular act of coercion had not occurred. The initial situation without government is, in his metaphor, a pie, with individuals having slices of varying sizes. Government violates individual rights in order to increase the size of the pie, but it must do so in a way that keeps the relative sizes unchanged.

This set of restrictions has several attractive features. Since the government must reimburse the victims of coercion, only the net gains are available to benefit others. Hence if there are no net gains, there will be no political pressure for coercion. Since the distribution of any gain is, in principle, determined in advance, there is no reason for individuals or interest groups to engage in costly struggles over who gets what.

But who is to decide what is or is not fair compensation? Who is to decide whether the benefits of government action are fairly distributed among the population? It appears that to enforce Epstein's proposed limit on government, we would need "government limiters" provided with unlimited resources of wisdom to decide what government can or cannot do, as well as the power to enforce their decisions. Of course, if we had such a body of omnipotent philosopher-kings to solve our problems, we would no longer require limits on government; we could simply turn the whole government over to the philosopher-kings and tell them to go out and do good.

This is the point where Epstein's real contribution to the argument becomes clear. While he has a good deal to say about both philosophy and economics, he is neither a philosopher nor an economist. He is a legal scholar, a professor at the University of Chicago School of Law. Lawyers are to economists and philosophers rather as engineers are to physicists and mathematicians; it is their business to take general principles and try to apply them to the problems of the real world.

That is precisely what Epstein does. In the early part of the book, he argues that his description of the limits of government is implied by political philosophy, makes sense in terms of economics, and is explicitly present in the eminent domain clause of the Constitution. In most of the rest of the book he tries to demonstrate that if the principle of eminent domain were accepted as a fundamental legal doctrine, it would lead, in a wide range of cases, to unambiguous conclusions regarding what government acts are or are not constitutional.

In reaching this conclusion, Epstein relies heavily on the existing body of "private law"—the legal rules that define the rights of individuals with regard to other individuals. By his account, the government has the same rights as a private individual, with the one difference that where a private individual who takes something by force is required to return it, the government is required to pay for it. Hence in deciding whether an act of government is legal, the first step is to ask whether it is something a private individual could legally do. If the answer is no, then the action can only be justified, if at all, as a forced transaction—in which case the government is required to compensate the coerced individual for the full value of what he is losing.

To see how stringent a restriction this is on government action, consider zoning. I own a parcel of land on which I intend to put up apartment buildings. The local government zones the land for single-family dwellings, greatly reducing the value of my land. For a private individual, this action would be illegal, since it would be taking by force a part of the bundle of property rights that make up my ownership of the land. Hence government zoning is a form of taking. Hence it can be done only if the government that enacts the zoning restrictions is prepared to compensate me for the reduction in value of my land—which is, to say the least, improbable. Under Epstein's reading of the eminent domain clause, virtually all existing zoning legislation is unconstitutional.

If government is compelled to pay the full value of what it takes, how can it collect taxes? There seems little point in the Internal Revenue Service collecting a thousand dollars from me, then returning the money as a compensation for taking it. Epstein's answer to this is that taxation is indeed a forced taking, hence the taxpayer must be compensated, but that the compensation need not be in cash. If the taxes collected are used to provide benefits to the taxpayer worth at least as much as what was collected, the taxpayer has been fairly compensated for what was taken.

This imposes severe restraints on what kinds of taxes can be imposed for what purposes. Any redistributive tax, designed to change people's relative incomes, is unconstitutional, since the benefits do not go to the people who are paying the tax. That includes the graduated income tax we have now.

These are two examples, culled from several hundred pages of legal analysis. They illustrate two general points about the book. The first is Epstein's claim that by combining his definition of what government is entitled to do with the system of legal rules that already exists to settle disputes among private individuals, one can, in a wide range of cases, produce an unambiguous judgment about what actions governments may or may not take. The second is that the author follows out the implications of his ideas with admirable disregard for existing legal doctrine; he is not in the least disturbed to discover that his conclusions contradict repeated decisions of the Supreme Court, or that much of the existing system of taxes and a majority of the acts of existing governments are by his standards unconstitutional.

This is not always an easy book to read. Epstein is writing in the middle of a running controversy among legal scholars, economists, and political philosophers, so a reader who is none of the above may find himself at a disadvantage. Even the economists and the political philosophers are likely to find that working out the implications of general principles by applying them to hundreds of real-world legal cases is heavy going.

Yet it is a book well worth reading. For some, even the limited role for government that Epstein outlines may seem too much. Perhaps it is. But if legal scholars accept Epstein's position as marking one point—

the book case

perhaps an end point—in the accepted range of debate, then this book will have changed the tenor of that debate, and changed it in a direction favorable to the creation and maintenance of legal doctrines consistent with a free society.

David Friedman, author of The Machinery of Freedom *and* Price Theory, *teaches economics at the Freeman School of Business, Tulane University, in New Orleans.*

■ ***Rankin: Enemy of the State, by John Osier, Memphis: St. Luke's Press, 154 pages, $12.95.*** Tom Rankin crouched silently in the brush along the river--again. The security police (Sepos) flashed their searchlight along the riverbank. Rankin shrank deeper into the shrubbery—again. How many times had this scene replayed during the past few months? Rankin couldn't remember. His existence had been a wearying, incessant flight from every living soul in the United States.

Rankin, a loner, a man with a limp, an inconsequential night watchman in Memphis, Tennessee, had become an "enemy of the state." So designated, he was legitimate prey of any man, woman, or child seeking the rich bounty offered by the state to his killer. His own crime? Rankin had failed to kill another outlaw—a wretched, feverish schoolteacher who chanced (Damn it, thought Rankin) to show up on the dock that Rankin guarded to earn a living. A hawk-eyed old lady, eager for some bounty money to ease her out of her poverty, spotted Rankin's lapse—his moment of pity for the poor teacher—and reported him to Sepos.

Rankin: An Enemy of the State, by John Osier, is a gripping thriller. The United States, under the iron heel of a military junta, has only recently emerged from a devastating but inconclusive war. Under pretense that renewed fighting is imminent, the junta becomes Big Brother—watchful of all and in control of everything. Food is rigorously rationed. For the government, the rationing frees up food to sell abroad in exchange for more weapons. Conveniently, it also keeps a hungry population dependent, subservient, and fearful. From this hungry population and the all-powerful Sepos, Rankin flees. Author Osier masterfully absorbs the reader in this flight. As a chase novel, *Enemy of the State* is first-rate.

But it's more than that. Here and there, hard-working, long-suffering individuals extend a hand to help Rankin, risking their own lives in the process. Their integrity and their resilience make this novel, in the end, an optimistic one, one in which individuals can and do escape the mass psychology of fascism. Rankin himself, once robotic and unquestioning, begins to understand why the poor schoolteacher risked his life to write from memory the Bill of Rights and post it prominently around town. And Rankin's suspicions of the pack of zealous revolutionaries willing to spill the blood of innocent youths to achieve their aims tease the reader into political reflection.

One more thing. Clint Eastwood fans will love to picture him starring in this one.

—Lynn Scarlett

rudebarbs

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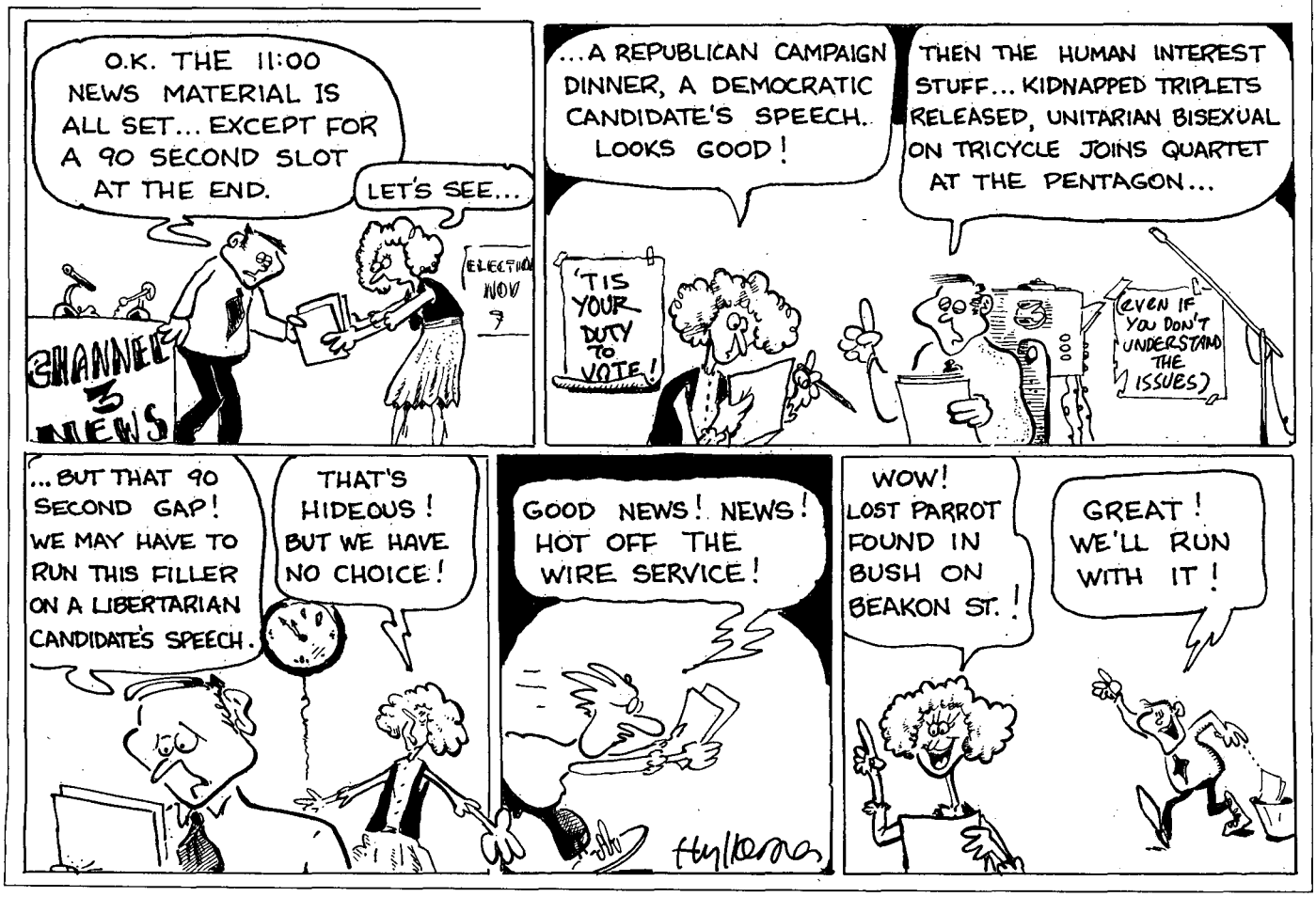
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viewpoint

By Henry Mark Holzer

The Sodomy Solution: Repeal, Not Appeal

When the Supreme Court recently upheld a Georgia law that outlaws private homosexual conduct, the common reaction from friends of liberty was that this is a dreadful decision portending a new assault on individual rights. "It is the opening shot of the Rehnquist court," warned one civil-liberties attorney. In fact, however, the Court reached the right decision— albeit for the wrong reason.

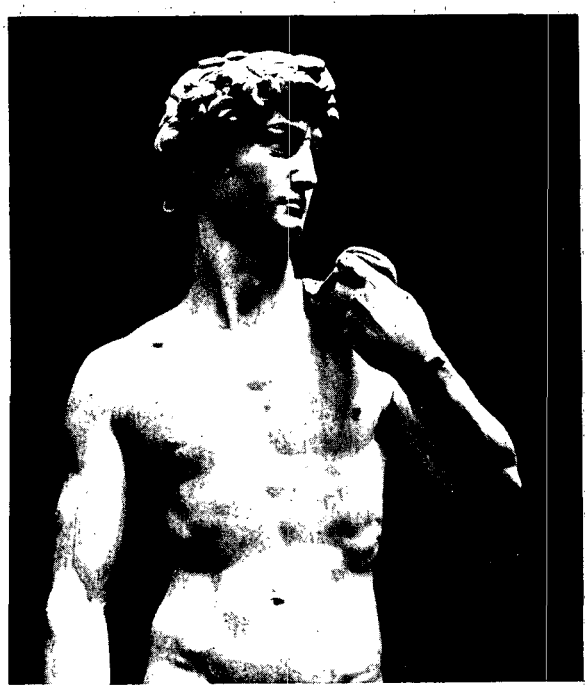
The case involved a gay Atlanta man, Michael Hardwick, who was charged under a Georgia antisodomy statute for having sex with another man. The charge was later dropped, but Hardwick sued the state, claiming a right to privacy. When the case reached the US Supreme Court, "the issue presented [was] whether the *Federal Constitution* [emphasis added] confers a fundamental right upon homosexuals to engage in sodomy and hence invalidates the laws of the many States that still make such conduct illegal."

The Supreme Court, in a closely divided 5-to-4 decision, ruled that Georgia's law is not unconstitutional. Justice Byron R. White, writing the majority opinion, noted that the ruling was not a "judgment on whether laws against sodomy between consenting adults in general, or between homosexuals in particular, are wise or desirable." Rather, it simply said—correctly—that there is no *federal constitutional remedy* for those who would undo Georgia's law.

To understand Hardwick's assertion of a right to privacy, one must return to the landmark 1965 case of *Griswold* v. *Connecticut*, which centered around a challenge to a Connecticut law that prohibited the sale of contraceptives. It fell to the liberals, led by Justice William O. Douglas, to invalidate the law. But how? He couldn't invoke the Bill of Rights—the first nine amendments protect individuals' rights only vis-a-vis the *federal* government, not *state* governments.

Douglas might have tried to use the 14th Amendment, which requires that states ensure due process under the law for all citizens, but he didn't. The concept of due process, after all, is a double-edged sword: if a liberal court used it to strike down a Connecticut anticontraceptive law, a conservative court could someday employ it to overturn a New York law that violates, say, property rights.

Instead, Justice Douglas invented a constitutional "right to privacy." He spun it, for all intents and purposes, out of thin air. Douglas's *Griswold* decision refers to "emanations" and "penumbras" and other hopelessly ambiguous concepts in a successful attempt to invent a hitherto unknown constitutional right.



The liberty-minded have been inclined to applaud Douglas's action in *Griswold*. A ridiculous, meddlesome law *was* overturned. In the same vein, it would seem that the Court should have made a similar decision in the *Hardwick* sodomy case and tossed out the Georgia law.

In fact, however, in *Griswold* the Court unconstitutionally usurped power properly resting at the state level. True, some bad laws can thus be tossed out. But to grant the Supreme Court broad powers to strike down any state law it happens to dislike is to discard the fundamental premise upon which our political system was founded—federalism.

Too few people understand the importance of federalism to the protection of individual rights. Making sure that the federal government and the state governments do not overstep the clearly delimited jurisdiction laid out in the Constitution is essential to the maintenance of freedom. To allow the court to vitiate federalism—to virtually erase the distinction between the state and federal governments—would result in a megagovernmental entity, acting as a kind of superlegislature and possessing sole power to govern, ultimately, every aspect of this nation's political life.

So why, then, do I refer to the *Hardwick* case as the right decision for the *wrong* reason? Because Justice White's opinion, as well as a concurring opinion by Chief Justice Burger, went well beyond a defense of federalism to express *support* for state antisodomy laws. Like White and the three other majority justices, Burger, exhibiting the same collectivist mentality as the Georgians who passed the law, explained, for example, that "homosexual sodomy was a capital crime under Roman law." Indeed, and so was Christianity.

Of course the liberals, particularly many gay-rights activists, are on the same side of the same statist coin. There is nothing wrong with trying to repeal antisodomy laws, which are stupid, immoral, presumptuous, and unenforceable. But a recent centerpiece of the gay agenda—"gay rights" ordinances—is antiproperty and thus profoundly antiliberty. These ordinances would require landlords and employers, regardless of personal or religious conviction, to rent to or hire gays. And the method liberals chose to attack the Georgia law would, if successful, have concentrated even more power in the federal government (that is, the Supreme Court).

Opponents of Georgia's antisodomy law, and similar laws in 24 other states, should use every available legitimate method to repeal them—but at the state level. They should not look for, nor advance, a *federal, constitutional* remedy. None exists, and we are freer for it.

Henry Mark Holzer is a professor of law at Brooklyn Law School and the author of Sweet Land of Liberty? The Supreme Court and Individual Rights.

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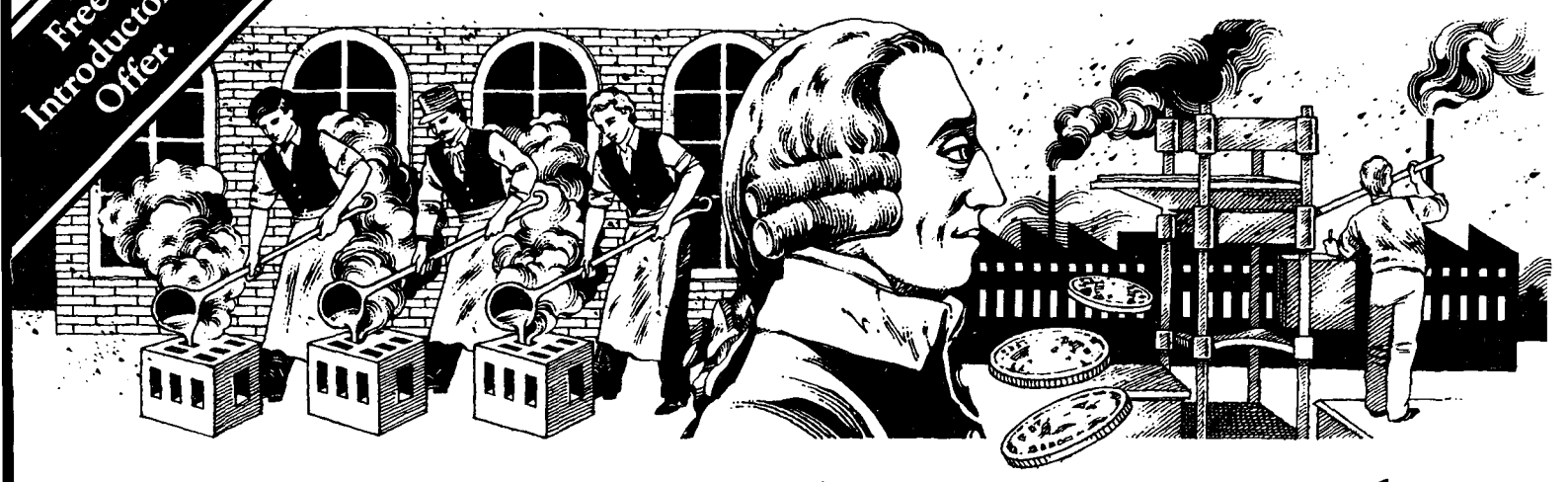

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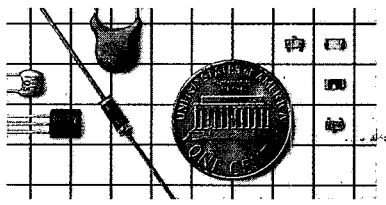

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